

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No. 1:21-cv-01032

5 -----x
6 SIETEL SINGH GILL, individually and on
7 behalf of other similarly situated
8 individuals,

9 Plaintiffs,

10 v.

11 NATIONAL FOOTBALL LEAGUE, a New
12 York unincorporated association, and
13 NFL ENTERPRISES, LLC, a Delaware
14 limited liability company,

15 Defendants.

16 -----x
17 March 23, 2022
18 5:06 p.m.

19 DEPOSITION of Plaintiff SIETEL
20 SINGH GILL, taken by the Defendants,
21 pursuant to Agreement, held via Zoom Video
22 Conferencing, before Abner D. Berzon, a
23 Registered Professional Reporter,
24 Certified Realtime Reporter and Notary
25 Public of the State of New York, via Zoom
Video Conferencing.

A P P E A R A N C E S :

(Via Zoom Video Conferencing)
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* * *

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND
AGREED, by and among counsel for the
respective parties hereto, that the
filing, sealing and certification of the
within deposition shall be and the same
are hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
form of the question, shall be reserved to
the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
signed before any Notary Public with the
same force and effect as if signed and
sworn to before the Court.

* * *

1

2 S I E T E L S I N G H G I L L , having
3 first been duly sworn by Abner D. Berzon,
4 a Notary Public of the State of New York,
5 was examined and testified as follows:

6 EXAMINATION BY MR. LEGHORN:

7 Q. I think we need to reflect for
8 the record, you know, the bi-continental
9 proceedings here. I am questioning from
10 U.S. Eastern Daylight Savings Time, which
11 is now 5:07, and I believe, Mr. Gill, it's
12 8:07 in the morning tomorrow, March 24th?

13 A. That's correct.

14 Q. Okay. Just so we have that
15 clear.

16 And, Mr. Gill, my apologies. I
17 am Thomas Leghorn. I'm with the firm of
18 London Fischer. Mr. Ranalli is an
19 associate in the firm. We represent the
20 National Football League, the National
21 Football Enterprises, who are the
22 defendants in this action. This is a
23 deposition as to limited issues as
24 delineated by Judge Engelmayer, and I'll
25 be asking you questions as the plaintiff

1 GILL

2 in the action.

3 Let me ask you: Have you ever
4 had your deposition taken before?

5 A. I have not, in an American
6 court, no.

7 Q. Okay. So let me just tell you,
8 I'm going to ask the questions; we have
9 to, especially because we're on the Zoom,
10 you have to let me finish asking the
11 questions; you may know exactly where I'm
12 going with it, but wait for your answer
13 till I'm done.

14 The court reporter can only take
15 down verbal responses, not shakes of the
16 head. Do that.

17 And this is an information
18 gathering exercise. It's not anything
19 more than that.

20 So I want to make sure, for all
21 of us, including yourself, that you
22 understand the questions I've asked or any
23 word or phrase that I have used. So if
24 you have any doubt as to what I'm asking,
25 you're confused about it, please just ask

1 GILL

2 me to repeat it or whatever you need to do
3 to explain why you can't answer it or you
4 don't understand it and I'll be more than
5 happy to try to rephrase it.

6 Also, we are -- you know, it is
7 a limited deposition. I'm going to try to
8 proceed through as expeditiously as
9 possible. I'm keeping an eye on the
10 clock, but that also -- I lose track of
11 time. So if at any point you need a
12 break, for whatever reason, you know, you
13 just ask for it and it will be granted.
14 We just ask that, you know, we don't take
15 a break while I've asked a question and
16 you haven't responded. And that is it.

17 We'll be showing you some
18 exhibits during today. I think we only
19 have about 14 of them total. I'm trying
20 to keep it as condensed as possible here.

21 Let me just start right off.
22 You understand that this case involves
23 Game Pass; correct?

24 A. I do understand that, yes.

25 Q. Okay. When was the first time

1 GILL

2 you ever subscribed to Game Pass?

3 A. I think it was the first time
4 that it was available to -- for me to
5 subscribe, in 2013.

6 Q. But for the 2013 season;
7 correct?

8 A. For the 2013 season.

9 Q. Right. And then in the NFL
10 lingo, the 2013 season includes the
11 playoffs that go into the next year, so
12 that it would be 2013 and whatever
13 playoffs are in 2014 --

14 A. '14.

15 Q. -- correct?

16 A. That's correct, yes.

17 Q. And was that an online
18 subscription, something you had to do
19 through the Internet?

20 A. Yes, it was.

21 Q. Okay. And it was your
22 understanding that this was the first time
23 Game Pass was available to Australian
24 subscribers?

25 A. I've been a fan of the NFL since

1 GILL

2 1992, so it was something I was always
3 looking for, and my understanding is that
4 was the first available occasion. Perhaps
5 it was available beforehand. I'm unaware.

6 Q. Thank you.

7 Prior to your first subscription
8 to Game Pass, had you subscribed to any
9 other online services from other sports or
10 cultural or educational services?

11 A. It would be close in timing, and
12 I'm not a hundred percent sure, but I have
13 had subscriptions to NHL TV and NBA TV.
14 It's possible one of those occurred before
15 or slightly after 2013.

16 Q. And when you did subscribe to
17 Game Pass, do you recall how you learned
18 of this service being available in
19 Australia?

20 A. Sorry. I have a distinct memory
21 of friends of mine that were signing up as
22 well, and there may have been something
23 online that I saw that also led my
24 attention to it.

25 Q. And was this something that you

1 GILL

2 yourself signed up for through the
3 Internet, or did someone do it on your
4 behalf?

5 A. No. I did it myself.

6 Q. And in signing up for Game Pass,
7 do you recall what information that was
8 provided on the Internet for Game Pass
9 that you read and considered before making
10 the decision to subscribe?

11 A. I don't. I don't directly
12 recall, no.

13 Q. Do you recall whether, prior to
14 taking whatever was the final online step
15 to subscribe, whether you viewed the terms
16 and conditions applicable to that service,
17 or any other online information?

18 MR. KRONENBERGER: Objection.

19 Vague, ambiguous, foundation.

20 Q. Any of this is a lawyer thing
21 that we need to explain to lay people, is
22 that Mr. Kronenberger is free to make
23 whatever objections. That's for the
24 record. But unless he says, "Mr. Gill,
25 don't answer," you have to answer.

1 GILL

2 So, first of all, did you
3 understand my question?

4 A. I understood the question.
5 You're asking if I can recall the occasion
6 that I signed up nine years ago, whether I
7 viewed any terms and conditions. Is that
8 a correct understanding of the question?

9 Q. That's a perfect understanding
10 of the question.

11 MR. KRONENBERGER: Objection.
12 Vague. Just to clarify, when I make
13 an objection, Mr. Gill, you don't have
14 to pause after my objection. You can
15 just continue right on.

16 THE WITNESS: Okay.

17 MR. KRONENBERGER: I don't want
18 to interrupt -- I don't want to cause
19 any undue delays.

20 THE WITNESS: Okay.

21 A. The simple answer to that
22 question, as I understand it, is I don't
23 recall whether I would have viewed any
24 terms and conditions.

25 Q. And did -- when you first

1 GILL

2 subscribed to Game Pass, what
3 understanding, if any, did you have for
4 what period of time that subscription
5 would cover?

6 A. I think, as with all
7 subscriptions -- that's a really good
8 question. I knew I'd at least get that
9 season, and I wasn't sure after that.

10 Q. Okay. So at the time you first
11 subscribed, you knew it was at least
12 subscribing for that first full season;
13 correct?

14 A. Yeah. So, by that, I mean,
15 everything from Week 1 through to the
16 Super Bowl, and I think the Pro Bowl was
17 after the Super Bowl and so I'd get the
18 Pro Bowl as well, which is important to
19 me.

20 Q. Okay. Well, you're one of the
21 few people left that it's still important
22 to.

23 A. Yeah.

24 Q. And when you first signed up for
25 Game Pass, were you required to provide

1 GILL

2 your credit card details and other
3 information necessary to effectuate the
4 subscription?

5 A. I recall that that was
6 necessary. Otherwise, it could not
7 happen.

8 Q. Okay.

9 MR. LEGHORN: And,
10 Mr. Court Reporter, can you put up
11 that first document.

12 (Defendant's Exhibit 1, printout
13 of e-mail dated September 10, 2013 re:
14 NFL Game Pass Purchase Confirmation,
15 Bates stamped GILL00001, marked for
16 identification, this date.)

17 A. I must say that I could only see
18 a small part of the page and a whole lot
19 of right-hand margin. So it appears to be
20 magnified beyond the requirements of this
21 call.

22 (Discussion held off the
23 record.)

24 MR. LEGHORN: So, back on the
25 record.

1 GILL

2 Q. Mr. Gill, just take a look at
3 the portion you can see there and then
4 we'll ask the court reporter to scroll
5 down to the bottom which just has some of
6 your billing for on it.

7 A. I can see from
8 nflgamepass@neulion.com to myself on
9 Tuesday, September 10, 2013.

10 Q. Yeah. I don't need to you to
11 read it; just to see so that you're
12 familiar with it.

13 A. I'm familiar with it, yeah.

14 Q. Okay.

15 MR. LEGHORN: And we'll take a
16 quick two-second break so Abner scroll
17 down and I won't say anything.

18 THE WITNESS: Could I ask,
19 Abner, there's a magnification setting
20 that I'm receiving that nobody else
21 seems to have a problem with, but when
22 you moved to the right-hand side with
23 your mouse cursor to use the scrolling
24 bar, it through my screen off again.

25 (Discussion held off the

1 GILL

2 record.)

3 A. I can see it now.

4 MR. LEGHORN: So, back on the
5 record.

6 Q. Mr. Gill, have you ever seen
7 this before?

8 A. Yes. We're talking about the
9 same document; yes?

10 Q. This, we're speaking solely
11 about what's on the screen and we'll be
12 marking as Defendant's Exhibit 1.

13 A. Sure.

14 Q. Okay. And what do you recognize
15 this document as?

16 A. Information that I have a Game
17 Pass Season Plus
18 prescription -- subscription.

19 Q. And those little numbers at the
20 bottom, GILL with a whole bunch of zeros
21 and a 1, that indicates it was produced by
22 your attorneys in this case as a document
23 coming from you. Do you recall that you
24 were able to locate this somehow either
25 online or in records you had printed out?

1 GILL

2 A. Yes. I recall finding this
3 document.

4 Q. And did you find it online, or
5 did you have a copy of this printed out?

6 A. I found it online.

7 Q. Okay.

8 A. Well, online, in terms of
9 through my e-mail provider.

10 Q. Okay. Right. And that's -- we
11 have that Gmail address listed on here for
12 you; correct?

13 A. Yes.

14 Q. And were you able to find this
15 document through a request to Gmail?

16 A. Yes.

17 Q. Was that a "yes" or "no"? I
18 couldn't hear.

19 A. Yes.

20 Q. Thank you. And were you able to
21 find any e-mails other than this document,
22 this Exhibit 1 we're looking at, from your
23 Gmail address?

24 A. Was I able to find any
25 documents --

1 GILL

2 Q. For Game Pass.

3 A. -- for the collection by my
4 attorneys? Is that what you're asking?

5 Q. Well, I'm asking you: Were you
6 able to find documents pertaining to Game
7 Pass on your e-mail account, other than
8 this?

9 A. Yes.

10 Q. Okay. And did you provide those
11 as well?

12 A. Yes. Everything I have I sent
13 through to my attorneys.

14 Q. And is that the totality
15 everything that you had on your Gmail
16 concerning Game Pass?

17 A. Yes.

18 Q. And probably a few months ago
19 each side exchanged document demands, and
20 do you recall what if anything you did to
21 locate any documents that might have been
22 responsive to any of our demands?

23 A. I spent a significant amount of
24 time scouring my e-mails in my records to
25 find anything around certain keywords, and

1 GILL

2 the keywords were all pertaining to this
3 case.

4 Did I answer that question okay?

5 Q. You've answered the question.
6 As to the quality of the answer, I can't
7 answer. I'm just looking for answers.
8 It's up to Mr. Kronenberger and I he deal
9 with it later, as to whether --

10 A. I see.

11 Q. Yeah. And you'll see that
12 approximately in the middle of the portion
13 displayed on your screen, it says "Your
14 NFL Game Pass subscription for the 2013
15 season will end at 11:59 [Greenwich Mean
16 Time] on 31 [July] 2014".

17 Is that consistent with your
18 recollection of you purchasing that full
19 season?

20 MR. KRONENBERGER: Objection.

21 Vague, ambiguous, argumentive.

22 A. My understand upon reading that,
23 when I read it, was that, yeah, I -- that
24 is the subscription I purchased back in
25 2013.

1 GILL

2 Q. Now, Mr. Gill, at any time prior
3 to the 2020 Super Bowl --

4 A. Uh-hum.

5 Q. -- do you recall ever accessing
6 and reading the terms and conditions
7 applicable to Game Pass?

8 A. I don't recall.

9 Q. Is it your practice, when
10 entering into an online subscription for
11 any online service, to read the terms and
12 conditions applicable to that service?

13 MR. KRONENBERGER: Objection.
14 Objection. Vague. Calls for
15 speculation.

16 MR. LEGHORN: No. I'm asking
17 his practice.

18 Q. Go ahead, Mr. Gill.

19 A. My practice is to look closely
20 when I think I'm about to be charged more
21 money.

22 Q. Okay. So it fair to say, from
23 that response, if you think that you're
24 being charged more than you anticipated,
25 you take a look?

1 GILL

2 A. Well, two-fold. It's two-fold.
3 It's not purely am I being charged more
4 than anticipated, but are there hidden
5 charges that I can avoid if I'm more
6 aware.

7 Q. Okay. So let's take it back to
8 the beginning of Game Pass and for the
9 2013 season. Do you have any recollection
10 to looking at terms and conditions for any
11 other online information available to you
12 as to charges other than what we saw noted
13 in Exhibit 1 of AUD\$204.99?

14 A. I don't recall at the time. As
15 I mentioned, one of the reasons that I
16 joined up was that others, friend of mine
17 that were fans of the NFL had joined up at
18 the same time, and I was aware of what
19 they were paying, and that was the sole
20 decision maker for me as to whether I
21 should join, whether I could afford that.

22 Q. Okay. So let me just try to
23 clarify. So do you have any recollection
24 of ever viewing terms and conditions
25 applicable to Game Pass, at any time

1 GILL

2 between your first subscription in 2013
3 and prior to the 2020 Super Bowl?

4 MR. KRONENBERGER: Objection.
5 Vague, ambiguous.

6 A. I don't have any recollection of
7 that.

8 Q. Okay.

9 MR. LEGHORN: Abner, let's put
10 up the next document.

11 (Defendant's Exhibit 2, NFL
12 Subscription Products Terms and
13 Conditions June 8, 2012, updated July
14 29, 2013 Bates Stamped DEF0000001
15 through DEF0000004, marked for
16 identification, this date.)

17 (Discussion held off the
18 record.)

19 Q. So, Mr. Gill, what I've put up
20 before you, and we'll mark as Exhibit 2,
21 is the -- what's been provided by the NFL
22 as the terms and conditions applicable to
23 that first season you had.

24 A. Uh-hum.

25 Q. So let me just ask you to scroll

1 GILL

2 through as much or as little as you need
3 to to determine whether you think you've
4 ever seen this before.

5 A. The simple answer is I don't
6 know if I've ever seen that before.

7 Q. You have no recollection?

8 A. No recollection.

9 Q. Is it something you might have
10 seen, or you definitely didn't see, or you
11 just don't know?

12 A. I just don't know.

13 Q. Okay. And when you entered into
14 Game Pass, the online subscription for the
15 first time in 2013, did you understand
16 that, by subscribing and authorizing
17 payment to your credit card and using the
18 service, that you were, through those
19 actions, accepting whatever the applicable
20 terms and conditions were for Game Pass?

21 MR. KRONENBERGER: Objection.

22 Vague, ambiguous, calls for
23 speculation, compound.

24 A. My understanding is that, when I
25 purchased Game Pass in 2013, that I was

1 GILL

2 going to get the service that everyone
3 else had described. That's the best way I
4 can answer that.

5 Q. Okay. And when you say that
6 "everyone else had described", are you
7 talking about your friends who had also
8 subscribed?

9 A. Yes. Existing users that had
10 subscribed prior to myself.

11 Q. Right. So let me try to refine
12 the question. When you applied and
13 subscribed to Game Pass in 2013, were you
14 aware of the fact that, by applying and
15 subscribing to this particular online
16 service, you were, by that action,
17 agreeing to the applicable terms and
18 conditions for Game Pass?

19 MR. KRONENBERGER: Objection.
20 Foundation, ambiguous, vague.

21 A. In so much as when I sign up to
22 anything that got terms for doing things,
23 yes, I understood that.

24 Q. Thank you.

25 MR. LEGHORN: Abner, could you

1 GILL

2 please put up Exhibit 3 on Screen
3 Share.

4 (Defendant's Exhibit 3, NFL
5 Subscription Products Terms and
6 Conditions June 8, 2012, updated
7 August 6, 2014, Bates stamped
8 DEF0000199 through DEF0000203, marked
9 for identification, this date.)

10 Q. So once again, we're showing you
11 a document that we've now marked as
12 Exhibit 3. This is another set of terms
13 and conditions. This is for the
14 subsequent NFL season, NFL Game Pass
15 season. Take a look through it, see if
16 you recall ever having seen these terms
17 and conditions before.

18 THE WITNESS: Could the court
19 reporter please increase the size of
20 it, using the Zoom.

21 MR. KRONENBERGER: I just place
22 an objection on the record regarding
23 foundation for this document.

24 So the question is --

25 Q. Do you recall ever seeing this

1 GILL

2 document, which is -- appears to be the
3 applicable terms and conditions for the
4 2014 NFL season?

5 A. I don't recall seeing this.

6 Q. Okay.

7 MR. LEGHORN: Abner, you can
8 take the document down.

9 Q. Mr. Gill, did you subscribe to
10 the 2014 NFL season through Game Pass as
11 well?

12 MR. KRONENBERGER: Objection.
13 Vague, ambiguous.

14 A. I'm pretty sure that it
15 automatically renewed.

16 Q. And when you say "automatically
17 renewed", what was your understanding of
18 automatic renewal for Game Pass?

19 A. Just to say that, if my credit
20 card happened to also be on file, and that
21 credit card was valid, and there was the
22 capacity to spend on it, then it would --
23 or even if there wasn't a capacity to
24 spend, they would apply a charge towards
25 it, for whatever the fee was for the

1 GILL

2 upcoming season.

3 Q. And do you recall that, prior to
4 a renewal for the 2014 season, that you
5 received one or more e-mails advising you
6 of your ability to opt out of any
7 automatic billing renewal?

8 MR. KRONENBERGER: Objection.
9 Foundation, ambiguous, vague.

10 A. I don't recall seeing that.

11 Q. Let me ask you just a general
12 question. Other than that e-mail we
13 looked at, which was Exhibit 1, which was
14 confirmation of your paying for the first
15 season, using that as a start date, in the
16 pre-2013 football season -- and the date
17 of that, to be precise, was September
18 10th, 2013 -- using that as a start date,
19 and using that as an end date, July 31,
20 2019, do you have any recollection of
21 receiving any e-mails at all from --

22 MR. KRONENBERGER: Objection --

23 Q. -- from the time of either --

24 MR. KRONENBERGER: One moment.

25 Objection. Ambiguous, vague,

1 GILL

2 foundation.

3 MR. LEGHORN: I didn't finish
4 the question.

5 MR. KRONENBERGER: I'm sorry,
6 Tom. I apologize.

7 MR. LEGHORN: Yeah, I -- because
8 when you objected, I would expect the
9 answer to be "yes", because I said,
10 "Did you ever receive, or recall
11 receiving, e-mails..." and I would
12 think it would be "yes". So
13 let -- let me --

14 THE WITNESS: The answer
15 is -- the answer is yes, that I recall
16 seeing e-mails.

17 MR. KRONENBERGER: Yeah.

18 Q. So the full question is: Do you
19 recall, in that time period, September
20 10th, 2013 to July 31 of -- let's just say
21 the end of July 2019 -- do you recall
22 receiving e-mails in connection with the
23 NFL's Game Pass?

24 MR. KRONENBERGER: Objection.
25 Foundation, ambiguous, vague.

1 GILL

2 A. So, you're asking me if, from
3 that start date to the end date, did I
4 recall receiving a single e-mail that
5 would have involved the words, or have the
6 heading, "NFL Game Pass" or being from NFL
7 Game Pass?

8 Q. Correct.

9 A. The answer is yes. Yes.

10 Q. And what e-mails do you recall
11 receiving in that time period, generally?

12 A. I don't know how to answer that;
13 it's a long period of time and I haven't
14 itemized every single e-mail that I saw in
15 that time.

16 Q. Okay. And you received many,
17 many e-mails, and that you can't recall?

18 A. Can we define "many, many"?

19 Q. Yes.

20 A. Well, what is "many, many"?

21 Q. Well, I thought I was using
22 yours, your words, but how many e-mails
23 approximately do you think you recall
24 receiving in that time period involving
25 NFL Game Pass?

1 GILL

2 A. I'd have to speculate. I'd have
3 to guess. I could say that there was -- I
4 was always aware of getting e-mails from
5 NFL Game Pass. If I got them, I am not
6 sure that I necessarily clicked on and
7 opened every one. If it definitely told
8 me that your subscription is being
9 renewed, often I could see that in the
10 heading. You see, I know I got the
11 e-mails. I'd say they're in the -- I
12 don't even think they're in the tens. I
13 might've got maybe two or three around --
14 around that time.

15 Q. Okay. Well --

16 A. ... a year, that is.

17 Q. We will be looking later on at a
18 log of the e-mails that you received at a
19 later period, the period when OverTier was
20 providing the service. We have that log.

21 But you said you would see --
22 when you received e-mails, you would see
23 the -- what's the word? -- the title or
24 what the subject was of it --

25 A. Yeah.

1 GILL

2 Q. -- and when you saw the subject
3 and it was an -- a Game Pass e-mail, would
4 you open all of them to read the content?

5 A. I have difficulty saying under
6 oath that I did open all of them.

7 Q. Okay. Would it make a
8 difference to you in determining whether
9 to open a Game Pass e-mail or not if the
10 subject matter was more of an
11 advertisement as opposed to a title that
12 led you to believe it was in connection
13 with the service being provided?

14 MR. KRONENBERGER: Objection.
15 Vague and compound.

16 A. I don't know that the criteria
17 you just described would encourage me any
18 more or less to open the e-mail.

19 MR. LEGHORN: Okay. Let's bring
20 up the next one, Abner.

21 (Defendant's Exhibit 4,
22 NFL.com - Subscriptions - Terms and
23 Conditions effective June 20, 2017,
24 Bates stamped DEF000064 through
25 DEF000066, marked for identification,

1 GILL

2 this date.)

3 Q. Okay, Mr. Gill, once again, just
4 take a look through this. I'm not going
5 to go through all the term and conditions,
6 but here is another one with effective
7 date June 20th, 2017, and we've marked
8 this as Exhibit 4. Please let me know if
9 you recall having ever seen this prior to
10 today.

11 MR. KRONENBERGER: I'm lodging a
12 general objection, foundation, for
13 this document.

14 A. Are you asking me whether or not
15 I've seen this prior to this case; right?

16 Q. Yeah. Have you ever -- do you
17 recall ever seeing this document before?

18 A. No. No, I don't.

19 Q. Do you have any reason to
20 believe you may have looked at it at or
21 about the time it was available online, or
22 you just can't recall?

23 A. I think it's unlikely, but I
24 truly can't recall to answer with any
25 veracity.

1 GILL

2 Q. Why do you say "unlikely"?

3 A. I just know, with everything I
4 was doing in 2017, I think it's unlikely
5 that I would have -- your question implies
6 I would have opened it up and read through
7 it. What's the date on it?

8 Q. It was June 20, 2017.

9 A. Yeah, I was traveling then.
10 That's why --

11 Q. Excuse me?

12 A. -- it's unlikely.

13 I was traveling --

14 Q. Uh-hum.

15 A. -- so it's very unlikely I would
16 have looked at it.

17 Q. These documents are generally
18 available throughout the year.

19 A. No, that's true. I would say
20 that that's why I used the word
21 "unlikely", because there are occasions
22 when I've been traveling when I sit down
23 and look at everything that I've received.
24 It's just unlikely that this would have
25 been one of the things I would have looked

1 GILL

2 at.

3 Q. Okay.

4 MR. LEGHORN: You can take that
5 one down.

6 Q. Now, Mr. Gill, at any time
7 between your first subscribing to Game
8 Pass and prior to the 2019 NFL season, do
9 you recall ever having occasion to make a
10 complaint to the service provider as to
11 problems you were encountering with Game
12 Pass?

13 A. I do not recall making any
14 complains in that time.

15 Q. Do you recall having, in that
16 same time period, prior to the 2019
17 season, do you recall having any technical
18 issues with the transmission of Game Pass
19 to you as a subscriber?

20 A. If I had any technical problems,
21 they were very generally temporarily fixed
22 and probably due more to my Internet
23 connection at the time.

24 MR. LEGHORN: And let's put up
25 as the next exhibit I think it's 5.

1 GILL

2 (Defendant's Exhibit 5, NFL
3 Digital Care communication #895246,
4 Bates stamped DEF0001250, marked for
5 identification, this date.)

6 Q. What's on my screen is the
7 totality of this document. So, you know,
8 the bottom line, I can see it's Kurt at
9 NFL Digital Care. Do you see that,
10 Mr. Gill?

11 A. Yes.

12 Q. So just read through this to
13 yourself.

14 MR. KRONENBERGER: Tom, could
15 you scroll through for me.

16 (Discussion held off the
17 record.)

18 A. Yeah, I've read the document.

19 Q. Okay. And does this refresh
20 your recollection of having had to reach
21 out to a provider of Game Pass as to a
22 technology issue?

23 A. I -- yeah, would be -- with the
24 prompting, I do remember; I do remember
25 sending that.

1 GILL

2 Q. Okay. And you recall whether,
3 in connection with this, other than this
4 online chat, or exchange of e-mails,
5 whether you had any telephone conversation
6 with anyone --

7 A. No, I do not recall. I'm not
8 familiar.

9 Q. And in the middle of this
10 document -- you'll need to scroll down a
11 little -- it seems to be a November 4,
12 2018 entry from you. Can you go to that.

13 A. Yup.

14 Q. Okay. And it says, "I have been
15 watching games on my subscription
16 successfully all season and have a paid
17 membership till mid 2019 with NFL Game
18 Pass." Is that in fact something you
19 wrote, because it says it's from Sietel,
20 November 4th, that you -- is that your
21 entry?

22 A. It's pronounced Sietel, but yes.

23 Q. Sorry.

24 A. Yes, that's something I wrote.

25 Q. And is it correct -- am I

1 GILL

2 reading this correctly, that you are
3 indicating that your subscription runs
4 till the end of 2019 -- till mid-2019 with
5 NFL Game Pass? Am I reading that
6 correctly?

7 MR. KRONENBERGER: Objection.

8 Foundation, vague, ambiguous.

9 A. I think at the time that was my
10 understanding, but I was really trying to
11 make the point that I was a paying member
12 and I had not the service I was meant to
13 be getting that I was paying for.

14 Q. And were they able to fix your
15 problem?

16 A. I don't think they did. I think
17 everything they recommended, I think it
18 self-resolved, which is to say that, if I
19 had done nothing, it would have
20 self-resolved. I don't think any action I
21 took as a result of anything Kurt Isaacs
22 told me fixed the problem, which is to say
23 it was completely out of my control.

24 Q. Mr. Gill, so let's -- let's use
25 that time period of September 10th, 2013

1 GILL

2 through the end of July 2019.

3 A. Okay.

4 Q. In connection with your Game
5 Pass subscription, would entries appear on
6 your credit card statement when payment
7 had been accomplished for your Game Pass
8 subscriptions?

9 A. Yes.

10 Q. And to the best of your
11 recollection, would there be a
12 corresponding entry on your credit card
13 statement for each year you subscribed to
14 Game Pass?

15 A. Yes.

16 Q. And did you ever take note of
17 the entity that had placed the transaction
18 through your credit card account in
19 connection with Game Pass?

20 MR. KRONENBERGER: Objection.
21 Foundation, ambiguous, vague.

22 A. Are you asking me if I ever -- I
23 don't really understand the question.

24 Q. Okay. So, for the entries for
25 Game Pass --

1 GILL

2 A. No.

3 Q. -- do you understand --
4 withdrawn.

5 For the entries that appeared
6 each year for the renewal of Game Pass --

7 A. Uh-hum.

8 Q. -- do you recall what entity
9 made the charge for Game Pass against your
10 credit card?

11 MR. KRONENBERGER: Objection.

12 Ambiguous, vague --

13 A. (Garbled audio)

14 MR. KRONENBERGER: -- foundation.

15 Q. I couldn't hear your answer.
16 Mr. Gill.

17 A. My answer is "No." I don't
18 recall -- I'm not sure I understand the
19 question, but if the question is did I
20 take note, you know, what the specific
21 name of the company was charging me on
22 Game Pass, charging me the Game Pass fee,
23 then no, I don't recall that.

24 Q. And is it your practice, when
25 you receive a credit card statement, to

1 GILL

2 look through the charges to make sure that
3 they were all charges that you made or
4 authorized?

5 A. I look through my credit card
6 statements for that effect, yes.

7 Q. Okay. And in that review, is it
8 fair to say you cannot recall who, what
9 entity, made the charge for your Game Pass
10 renewal each year?

11 A. I can't recall, no.

12 Q. Okay. Do you save your credit
13 card statements either electronically or
14 in paper form?

15 A. They're stored electronically in
16 the bank provider, with the American
17 Express provider account that I have. I
18 can access them, generally within 48
19 hours, if I have to.

20 Q. So if we were to ask you to look
21 to determine what entity entered the
22 charge for Game Pass for a period of,
23 let's say, the last five years, would you
24 be able to get those records?

25 A. I could go back in time and get

1 GILL

2 them, if that's what you're asking.

3 Q. Yes.

4 MR. KRONENBERGER: Objection.

5 Discovery is closed on this issue, so
6 just general objection on that ground.

7 MR. LEGHORN: Okay. Well,
8 discovery is closed, but it's not
9 closed if there was an insufficient
10 response, but that's for you and me to
11 talk about, not take up Thursday
12 morning of Mr. Gill's time.

13 MR. KRONENBERGER: Agreed.

14 A. I'm just thinking that through,
15 because it depends which card it was on.
16 If it was American Express, yeah, I can
17 get access to those. If it was on a
18 Commonwealth Bank account, I'm not sure.
19 I'm going to say, depending on the credit
20 card that each year was purchased on,
21 umm -- yeah.

22 Q. And I don't know, Mr. Gill,
23 because, for privacy and safety reasons,
24 you know, I -- you know, that Exhibit 1
25 only has 3001 as the last four digits of

1 GILL

2 your credit card on it, without any other
3 identifying information.

4 MR. LEGHORN: You can take down
5 that exhibit.

6 Q. Mr. Gill, prior to this lawsuit,
7 had you ever recalled hearing or reading
8 the name OverTier, O-V-E-R-T-I-E-R, in
9 connection with Game Pass?

10 A. No.

11 MR. LEGHORN: Let's bring up the
12 next exhibit, please.

13 (Defendant's Exhibit 6, Game
14 Pass invoices, Bates stamped
15 DEF0000163 through DEF0000174, marked
16 for identification, this date.)

17 Q. This is a fairly lengthy
18 exhibit, Mr. Gill. This is probably one
19 of the lengthiest exhibits we have. I'm
20 interested in the first four or five
21 pages, which are invoices from OverTier
22 that they provided to us in connection
23 with your account for Game Pass. So why
24 don't you look through the first four or
25 five pages and let me know if you ever

1 GILL

2 recall having seen these.

3 A. No. These only -- it's all
4 fairly new to me.

5 Q. And then if you could return
6 to -- keep scrolling. I'll tell you when
7 to stop. When you get past the invoices,
8 they're all basically the same. If you
9 see anything that you recognize, stop and
10 let us know. Why don't you stop there.

11 A. Yeah.

12 Q. It's -- you know, the credit
13 card information there indicates that, for
14 that particular year, it may have been a
15 Master Card or a Visa.

16 A. No.

17 Q. Do you have ability to access
18 bank statements for those cards, as well?

19 A. The Master Card, I should be
20 able to. I don't know about the visa,
21 though.

22 Q. Hold on, Mr. Gill. You passed
23 it.

24 A. Apologies.

25 Q. No, no. I want to get to the

1 GILL

2 point where it has payment information.

3 Keep going. Keep going. Keep going.

4 Whoops. There you go. That first

5 section, just get to the -- right there.

6 Okay.

7 A. Okay.

8 Q. This is -- you'll see -- at the
9 bottom of the screen, I see here -- I see
10 a charge of, on the date of August 2nd,
11 2019, for 274.99 AUD. Do you see that?

12 A. Yup.

13 Q. And it says it was processed;
14 correct?

15 A. Yes.

16 Q. The next two entries are error
17 entries. Do you recall that there was
18 some problem with the credit card, maybe
19 an expiration date or something else, and
20 a renewal for the 2020 season?

21 MR. KRONENBERGER: Objection.
22 Foundation. I don't think (garbled
23 audio)

24 (Crosstalking/garbled audio)

25 Q. Do you have any recollection --

1 GILL

2 do you have any recollection of why
3 payment failed for two times in the 2020
4 season?

5 MR. KRONENBERGER: Objection.

6 Foundation. It's not his document.

7 A. I don't have any recollection.

8 Q. You don't have any recollection
9 that it failed?

10 A. No, not specifically.

11 Q. Do you have any recollection of
12 anyone reaching out to you by e-mail,
13 voice or otherwise, seeking to obtain
14 further information from you to process
15 this payment?

16 A. I don't have any recollection of
17 that, no.

18 MR. LEGHORN: You can you can
19 take that one down, Abner. Bring up
20 the next one.

21 (Defendant's Exhibit 7,
22 Subscription Product Terms provided by
23 OverTier as the terms and conditions
24 in effect for the 2019 season, Bates
25 stamped DEF0000013 through DEF0000020,

1 GILL

2 marked for identification, this date.)

3 MR. LEGHORN: Ben, is this the
4 correct one? I see it looks like a
5 Track Change version and the one I
6 pulled doesn't have that.

7 MR. KRONENBERGER: Tom, this was
8 the version that I had saved for
9 Exhibit 7.

10 MR. LEGHORN: Okay. Somehow
11 mine printed out differently, but,
12 anyhow, let's use it. I don't think
13 it really makes a difference.

14 Q. Mr. Gill, what I have shown you
15 through this Exhibit 7 is what's been
16 provided to us by OverTier as the terms
17 and conditions in effect for the 2019
18 season. Can you scroll through, take as
19 long as or short as you want, to see if
20 you recall having ever seen these -- this
21 document prior to this litigation?

22 MR. KRONENBERGER: Objection
23 regarding foundation for the document,
24 its source, and the contents of the
25 document.

1 GILL

2 A. In the highlighted sections,
3 when I received the document, would it
4 have been highlighted?

5 Q. No. The highlighted would not
6 have been -- now, we'll have another one,
7 I think. This is 7. You know,
8 Exhibit 9 -- we'll be getting to it -- is
9 an updated one in that season as well,
10 and, you know, it would have looked like
11 that, Exhibit 9, without the red liner or
12 the highlighting.

13 A. I've never seen that before.

14 Q. Go back to the first page,
15 please.

16 MR. KRONENBERGER: I'd like to
17 lodge another objection here. This is
18 very confusing, in addition to
19 foundational problems, because this is
20 not what a consumer would see, and I'm
21 just -- I'm worried that it's going to
22 create confusion with the witness.

23 Q. Go back to the first page.
24 Please turn to that, number 2. Okay. So
25 read to yourself -- you see the bullet

1 GILL

2 point 2, "INFORMATION ABOUT US AND HOW AND
3 HOW TO CONTACT US"? 2.1 says, "Who we
4 are. Overtier Operations who is the
5 official licensee of the content material
6 and Deltatre S.p.A. who operates the
7 platform and deals with customer queries
8 (referred to as 'we', 'our' and 'us'). As
9 a customer you are contracted with both
10 entities"? Have you ever seen that
11 before?

12 A. No.

13 MR. KRONENBERGER: Objection.
14 Foundation, ambiguous, vague,
15 suggestive, compound.

16 MR. LEGHORN: You know, in the
17 federal rules, all you have to say is
18 "objection". They're all preserved
19 for trial.

20 MR. KRONENBERGER: I'm just
21 being careful.

22 Q. For the 2019 season, did you
23 have any understanding that, with the
24 renewal for that season, you were
25 contracting with OverTier and Deltatre for

1 GILL

2 the providing of the content of Game Pass?

3 A. No.

4 MR. KRONENBERGER: Objection.

5 (Garbled audio)

6 MR. LEGHORN: I couldn't -- I
7 couldn't hear the answer because of
8 the cautious objections over there.

9 A. My answer is "no."

10 Q. Okay.

11 MR. LEGHORN: Take that one down
12 an put up the next exhibit, which will
13 be 8.

14 (Defendant's Exhibit 8, printout
15 of e-mail re: Your payment has been
16 successful, and redacted portions,
17 Bates stamped GILL22 and GILL23,
18 marked for identification, this date.)

19 Q. You'll need access to that one
20 so you can get to the second page for the
21 little bit of print that's there.

22 Just go to the portion above
23 that block, "Attorney Client Privilege".
24 That's all there is. Right there.

25 On the first page, this was an

1 GILL

2 e-mail from NFL Game Pass to your Gmail
3 address, dated Friday August 2nd, 2019,
4 and this is a document provided by your
5 counsel. Do you recall having received
6 this e-mail?

7 A. Maybe. It seem like an e-mail I
8 would have received.

9 Q. And in that little, what you
10 have there?

11 A. Uh-hum.

12 Q. -- and in fact highlighted, "For
13 [Frequently Asked Questions] or to contact
14 customer support, click here," and there's
15 a hyperlink, do you see that?

16 A. Yeah.

17 Q. Did you ever click on the
18 hyperlink to find out what the questions
19 are, get more information?

20 A. I doubt it. I have no idea. I
21 doubt it, though.

22 Q. Do you know why this is
23 addressed to Dear Null, N-u-l-l?

24 A. I was just thinking that. Do
25 you know why it's addressed to Null?

1 GILL

2 Q. No. But I'll find out.

3 A. Okay.

4 THE WITNESS: Can I request a
5 bathroom break at this point? Is it
6 appropriate?

7 MR. LEGHORN: Absolutely. You
8 know, why don't we -- what do you
9 want, five minutes, ten minutes? You
10 tell me.

11 THE WITNESS: Ten minutes would
12 be great.

13 MR. LEGHORN: That's fine.

14 THE WITNESS: Alrighty. Thank
15 you.

16 (Time noted: 6:17 p.m.)

17 (Brief recess.)

18 (Time noted: 6:25 p.m.)

19 MR. LEGHORN: Back on the
20 record.

21 Why don't you bring up as the
22 next exhibit, which I think it is 9.

23 I think we put these exhibits in
24 reverse order. I think you actually
25 need to show 10.

1 GILL

2 (Defendant's Exhibit 10, Game
3 Pass Updates to Terms and Conditions
4 effective October 29, 2019, Bates
5 stamped DEF0001011, marked for
6 identification, this date.)

7 Q. Ask for control if you need to
8 make it bigger, smaller, or move it, but
9 that's the whole document.

10 A. Okay.

11 MR. KRONENBERGER: Objection to
12 the document. Foundation.

13 Q. Take, as in past, take as long
14 as or as quickly as you need to see if you
15 recall having seen this before.

16 A. I don't recall having seen this
17 before. Moreover, I can't actually read
18 the text underneath "NFL Game Pass".

19 Q. Well, I'll read it to you. It
20 says, "Certain restrictions apply. NFL
21 Game Pass International is available to
22 users in selected territories outside of
23 the United States, Canada and China.
24 Additional blackout restrictions apply in
25 the U.K. and Republic of Ireland.

1 GILL

2 Availability in HD-Quality video is
3 subject to device internet-connection speed
4 and to the system requirements for
5 streaming content at high are bitrates.
6 Visit our FAQ page here. For further
7 details on NFL Game Pass International
8 Terms and Conditions, including billing,
9 please click here.

10 "Overtier Operations, P.O. Box
11 2510, Kensington House, 69 Dr. Roy's
12 Drive, George Town, Grand Cayman KY1-1104
13 Cayman Islands."

14 And then it has "Terms of Use",
15 "Privacy Policy" as hyperlinks.

16 A. I don't recall seeing this.

17 Q. Do you see that this is a notice
18 indicating that there are updates to the
19 terms and conditions with respect to
20 Australian subscribers?

21 MR. KRONENBERGER: Objection.

22 Foundation, ambiguous, vague.

23 Q. Does the document say that?

24 A. (Garbled audio)

25 (Discussion held off the record

1 GILL

2 with court reporter.)

3 THE WITNESS: I asked the
4 question whether he's trying to
5 (garbled audio) the videos, but I see
6 it now.

7 MR. LEGHORN: I still couldn't
8 hear that.

9 THE WITNESS: I asked the
10 question of Mr. Leghorn as to where
11 the Australian subscriber component
12 was, but I've seen it since.

13 Q. Okay.

14 A. Yeah.

15 Q. And --

16 A. To answer your question, do I
17 recognize that it refers to Australian
18 subscribers, as I read it now, yes, I
19 recognize that.

20 Q. And the date of October 29, 2019
21 in this document as to which they were to
22 take effect on, is that a date prior to
23 the 2020 Super Bowl?

24 A. Oh, yeah, it is.

25 Q. Okay.

1 GILL

2 MR. KRONENBERGER: I want to
3 clarify my objection. Objection,
4 vague, foundation. Go ahead.

5 Q. And you see in the second
6 paragraph here that this document provided
7 a hyperlink to the new terms and
8 conditions?

9 A. It appears to, yes.

10 Q. Okay.

11 MR. LEGHORN: So you can --
12 before you take that down, Mr. Court
13 Reporter...

14 Q. ... do you have any recollection
15 of accessing a hyperlink in 2019 as to any
16 new terms and conditions for Game Pass?

17 A. No recollection of doing that.

18 Q. Okay.

19 MR. LEGHORN: So let's go back
20 to the prior one that we put out of
21 order.

22 (Defendant's Exhibit 9,
23 Subscription Product Terms for the
24 2019-2020 season, Bates stamped
25 DEF0000021 through DEF0000029, marked

1 GILL

2 for identification, this date.)

3 Q. Okay. And, Mr. Gill, ask for
4 access to this so you can scroll through
5 it.

6 A. Okay.

7 Q. It's several pages long.

8 MR. KRONENBERGER: Objection to
9 the document. Generally appears to be
10 a Microsoft Word document not viewed
11 by consumer. Confusing, misleading.

12 A. So what's the question around
13 this document as I scroll through it?

14 Q. I just -- the question is scroll
15 through it. This is a different version
16 of the document we looked at earlier with
17 the highlighting on it. This has been
18 provided by OverTier as the document that
19 was available at the hyperlink on the
20 document you just looked at previously,
21 which was Exhibit 10.

22 A. Uh-hum.

23 MR. KRONENBERGER: Objection
24 regarding the characterization,
25 foundation.

1 GILL

2 A. Okay.

3 Q. Having scrolled through this, do
4 you have any recollection of ever having
5 seen this document before?

6 A. I haven't seen this document
7 before.

8 Q. And just go back to the first
9 page. Right there.

10 A. Uh-huh.

11 Q. And, Mr. Gill, if you'll see in
12 bullet 2.1, this has the same language as
13 the document we previously saw that
14 indicates that the contract between the
15 subscriber is with OverTier and Deltatre.
16 Is that an accurate reading of what that
17 it is says?

18 MR. KRONENBERGER: Objection.
19 Ambiguous, vague, lack of foundation,
20 calls for speculation.

21 A. You're asking me do I recognize
22 that that paragraph says that this
23 OverTier Operations is the licensee?
24 Sure. That's what it says.

25 Q. And that the customer -- that

1 GILL

2 the subscriber -- is contracting with
3 those entities; correct?

4 MR. KRONENBERGER: Objection.
5 Foundation, ambiguous, vague, calls
6 for speculation.

7 Q. Is that what it says?

8 A. Is that what it says?

9 Q. It says, third line, "As a
10 customer you are contracted with both
11 entities," and previously it says we are
12 OverTier and Deltatre.

13 A. So, yeah. Yes, okay, so I
14 understand that's what it says, that I'm
15 in the contract with the NFL and with this
16 OverTier.

17 Q. And where do you get that you
18 have a contract with the NFL?

19 A. It's NFL Game Pass. I think
20 it's reasonable that I thought I had a
21 contract with the NFL.

22 Q. But do you have any document in
23 your possession that indicates that you,
24 for the 2019-2020 season, entered into a
25 contract with the NFL itself or the NFL

1 GILL

2 Enterprises for the provision of Game

3 Pass?

4 A. Do I have a contract? I don't
5 know.

6 MR. KRONENBERGER: Objection.

7 Objection. Calls for a legal
8 conclusion.

9 MR. LEGHORN: No. I'm asking:

10 Q. Do you have any document? I'm
11 not asking you to conclude anything. Do
12 you have any document that embodies a
13 contract between you and either the NFL or
14 NFL Enterprises for the provision of Game
15 Pass to you in Australia?

16 A. I do not know.

17 MR. KRONENBERGER: Objection.

18 Legal conclusion.

19 MR. LEGHORN: With those
20 objections, I couldn't hear the
21 answer.

22 A. I do not know.

23 Q. You do not know, or you do not
24 have them?

25 A. I do not know whether I have

1 GILL

2 one.

3 Q. Have you looked for one? Have
4 you undertaken a search for any such
5 document?

6 A. Well, for that specific
7 question?

8 Q. Yes. For a contract between you
9 and the NFL or the NFL Enterprises.

10 MR. KRONENBERGER: Objection.
11 Vague, ambiguous, also calls for
12 speculation.

13 A. Have I specifically looked for a
14 document that says that for -- which
15 season was it, Mr. Leghorn?

16 Q. 2019-2020.

17 A. So 2019-2020 season, for which I
18 constantly ordered, renewed, and when
19 I -- do I have a document that says that I
20 was clearly in a direct contract for the
21 provision of Game Pass with NFL
22 Enterprises? I've not looked for that.

23 Q. You have not looked for that?

24 A. For that specific question, I
25 have not gone to look for that document,

1 GILL

2 no.

3 Q. Okay. Or -- you only mentioned
4 NFL Enterprises. Would it be any
5 different if it was for the NFL itself?

6 A. I don't -- I don't know enough
7 about the construction of the NFL and NFL
8 Enterprises to answer that question.

9 Q. Okay. Well, I placed before
10 you, which I have represented to you are
11 the terms and conditions for the 2019-2020
12 season that indicates a contract from any
13 subscriber in Australia for Game Pass was
14 with OverTier and Deltatre, and I am
15 trying to determine if you have any
16 document that indicates and supports your
17 contention that, for the 2019-2020 season,
18 you had a contract with either the
19 National Football League or NFL
20 Enterprises for the provision of Game Pass
21 to you in Australia.

22 MR. KRONENBERGER: Objection.

23 Mischaracterizes document, foundation,
24 ambiguous, vague.

25 A. For the length of that question,

1 GILL

2 means I'm not really sure how to answer
3 it.

4 MR. LEGHORN: Mr. Court
5 reporter, if you could read back that
6 question.

7 (Question read.)

8 A. Yeah. The answer is I don't
9 know that I have that document or whether
10 I don't have that document.

11 Q. And is it that you don't know
12 that you have such document because you
13 either didn't search for such document, or
14 you couldn't find such document after a
15 search?

16 A. I haven't specifically searched
17 for that document.

18 MR. LEGHORN: Take that down,
19 please, Mr. Court Reporter. Let's
20 pull up number 11.

21 (Defendant's Exhibit 11,
22 Subscription Product Terms for
23 Australia for the 2019 season attached
24 as an exhibit to the original motion
25 to dismiss, pages 2 through 18, marked

1 GILL

2 for identification, this date.)

3 Q. So, Mr. Gill, this is a copy of
4 the terms and conditions for the 2019
5 season that was attached as an exhibit to
6 the original motion to dismiss in this
7 case. Just another version of what we've
8 seen?

9 A. What I see is really faint.

10 Q. It is really faint. That's
11 unfortunately how it appears online and
12 can't make it any darker than that.

13 A. Can I ask why can't it be made
14 any darker?

15 Q. I don't control the font on a
16 PDF. That's why.

17 A. No, I appreciate you don't, but
18 this is basically stuff to be able to make
19 it darker for anybody versed in
20 typography.

21 Q. Uh-hum.

22 MR. KRONENBERGER: I'd like to
23 lodge a general objection regarding
24 foundation and mischaracterization
25 about this document.

1 GILL

2 A. So I don't recall seeing this
3 document, but, had I recalled seeing it,
4 would it have appeared to me like this, as
5 difficult to read as this?

6 Q. Would it appear to you last
7 year, and then I lost you.

8 A. Sorry. I don't recall having
9 seen this document, but, if anybody could
10 see this document when it was sent, was it
11 sent like this?

12 Q. No. This -- my understanding is
13 this the online -- a printout of what was
14 online.

15 A. Right. Okay. Right. What's
16 the question related to this?

17 Q. Only, unlike the other versions
18 we've seen, this refreshes your
19 recollection of --

20 A. No.

21 Q. -- having ever seen this before?

22 A. Not at all.

23 Q. Okay.

24 MR. LEGHORN: Can you take that
25 down. Pull up the next one, please.

1 GILL

2 (Defendant's Exhibit 12,
3 printout of Excel chart provided by
4 OverTier indicating service e-mails
5 sent to Mr. Gill in the 2019-2020 time
6 period, marked for identification,
7 this date.)

8 Q. Okay. What I've placed before
9 you as this exhibit, as Exhibit 12, is a
10 chart provided to us from OverTier
11 indicating the e-mails that were sent to
12 you, to your e-mail address, as a
13 subscriber to Game Pass, and if you -- and
14 if you look in the column "DateSent", you
15 see they span from 2019 to a date in 2021,
16 and these were e-mails pertaining to the
17 service, as opposed to advertisements.

18 A. Okay.

19 Q. Okay? And you -- if you look at
20 the -- you have there "DateSent" in that
21 column, and then the next one is -- the
22 next column over to the right, you'll see
23 it's "DateFirstOpened". If you could
24 scroll over so you can see it on your
25 screen.

1 GILL

2 A. Yeah.

3 Q. And this is what's been
4 represented to us, and for which we will
5 have supporting testimony from OverTier --

6 A. Yeah --

7 Q. -- is the electronically-stored
8 information by OverTier and/or Deltatre as
9 to when each of these e-mails were sent
10 and the date you, as the recipient, first
11 opened them.

12 A. Can I just get some clarity on
13 that point. So when you say myself as the
14 recipient, does that mean myself sitting
15 in front of my computer opening the e-mail
16 to read it, or could it be -- I have about
17 12 devices -- could it be it showing up in
18 a notification and that triggering an
19 opening?

20 Q. My understanding is it would
21 only -- whatever device you were on, it
22 would require you physically, to the
23 extent one physically does anything --

24 A. Yeah.

25 Q. -- electronically, but you

1 GILL

2 taking action to open it; not that it's
3 just residing as an unopened e-mail.

4 MR. KRONENBERGER: Objection
5 regarding foundation for this
6 document, as well as for -- as
7 characterizations for this document.

8 Further objection regarding the
9 comments that are placed within the
10 document, which I assume to be
11 comments from counsel or from a party,
12 which are different from what's been
13 produced to us.

14 A. Okay. So, sorry, what was the
15 question I was being asked?

16 Q. So the question is: Having seen
17 this e-mail, which is a representation of
18 service e-mails sent to you by either
19 OverTier or Deltatre in the 2019-2020 time
20 period, does it refresh your recollection
21 in any manner of having opened any service
22 e-mails from OverTier or Deltatre?

23 A. No, it doesn't. It does not
24 refresh my recollection.

25 MR. KRONENBERGER: Same

1 GILL

2 objection. Same objections:

3 Inadequate --

4 MR. LEGHORN: I -- I -- I --

5 MR. KRONENBERGER: -- methodology
6 for refreshing --

7 MR. LEGHORN: I understand.
8 I'll give you a standing objection so
9 you don't have to take up more of
10 Mr. Gill's time.

11 MR. KRONENBERGER: Tom, by the
12 way, there -- there are certain judges
13 out there that require some comment
14 along with the objection. I'm not --
15 I mean, some of them have it in their
16 local rules. In the abundance of
17 caution, I'm trying to keep it --

18 MR. LEGHORN: (Garbled audio)

19 (Crosstalking/garbled audio)

20 MR. KRONENBERGER: -- have some
21 structure (garbled audio)

22 (Crosstalking/garbled audio)

23 MR. LEGHORN: And

24 -- and -- and -- (garbled audio)

25 (Crosstalking/garbled audio)

1 GILL

2 MR. KRONENBERGER: -- I'm not
3 (garbled audio)

4 (Crosstalking/garbled audio)

5 MR. LEGHORN: And that -- and
6 that's why --

7 MR. KRONENBERGER: (Garbled
8 audio)

9 (Crosstalking/garbled audio)

10 MR. LEGHORN: And that's why I
11 said you can have a standing objection
12 on that string; you're not waiving
13 anything.

14 MR. KRONENBERGER: Yeah,
15 regarding this document.

16 MR. LEGHORN: Yes.

17 MR. KRONENBERGER: Thank you.

18 MR. LEGHORN: Regarding any of
19 these documents.

20 Okay. You can take that down.
21 Thank you. And you can put the next
22 one up.

23 (Defendant's Exhibit 13,
24 printout of document hyperlinked from
25 prior e-mail titled, "Game Pass

1 GILL

2 Reminder: Update your NFL Game Pass
3 App(s)", pages 1 through 11, marked
4 for identification, this date.)

5 Q. The next three exhibits we're
6 going to be showing you -- and we'll do
7 them in sequence -- are documents that,
8 from the prior exhibit, that if you hit
9 the hyperlink for the e-mail sent to your
10 e-mail address, this is what pops up on
11 it.

12 So take a look at this first one
13 and let me know if you recall having seen
14 this.

15 MR. KRONENBERGER: Same
16 foundation objections.

17 A. I don't recall.

18 Q. Before going too deep into this
19 document, do you recall that, prior to the
20 2019 season, it was necessary for any
21 subscriber in Australia to download a new
22 platform over which to continue to receive
23 and view Game Pass for the 2019?

24 A. I don't recall that.

25 Q. Let me ask you this. Did you --

1 GILL

2 did you in fact view any portion of the
3 2019-2020 NFL season on Game Pass in
4 Australia?

5 A. I did. I watched some of the
6 2019-2020 season in Australia.

7 You've asked about a platform.
8 The way in which I watched the bulk of
9 games is by clicking a link in my Internet
10 browser, being Google Chrome, is the
11 Internet browser I use the most. It may
12 have been Firefox or Edge, depending on
13 which device I watched it on, and I don't
14 recall being asked to download anything
15 new for that purpose of watching it
16 through my browser, but I certainly
17 watched games, yes, for that season.

18 Q. So let's go back to the first
19 page.

20 A. Okay.

21 MR. LEGHORN: And off the
22 record.

23 (Discussion held off the
24 record.)

25 MR. LEGHORN: Back on the

1 GILL

2 record.

3 Q. Mr. Gill, I stand corrected. I
4 thought that these e-mails were separate
5 exhibits, but we put them together for
6 ease of making this a quicker deposition
7 for you, as one composite exhibit.

8 So -- and I saw you scrolling
9 through them. Have you looked through all
10 of these?

11 A. Yeah. I've -- I've looked
12 through it for the purposes of whether
13 I've seen it before or not.

14 Q. Okay. So here -- let's go back
15 to the first one. Are you there? First
16 starts off with your NFL Game Pass
17 subscription is getting an update.

18 A. Yeah.

19 THE WITNESS: Can I just have a
20 30-second break to take a pain killer?

21 MR. LEGHORN: I couldn't hear
22 you, Mr. Gill.

23 THE WITNESS: Could I have a
24 30-second break just to swallow a
25 pain (garbled audio)

1 GILL

2 (Crosstalking/garbled audio)

3 MR. LEGHORN: Yeah, yeah, yeah.

4 Go for it.

5 (Time noted: 6:56 p.m.)

6 (Brief recess.)

7 (Time noted: 6:59 p.m.)

8 Q. So, this first paragraph, the
9 "Reminder: Update your NFL Game Pass
10 App(s).", have you read that over?

11 A. Yes.

12 Q. Does this refresh your
13 recollection that you needed to update
14 your app to watch the 2019-2020 season?

15 A. It doesn't, and I'm going back
16 to what I said earlier: I watch it
17 through the browser and, in my experience,
18 that doesn't require an updating of any
19 app.

20 Q. You watch it in your browser on
21 your laptop?

22 A. Yes, I do.

23 Q. When you first subscribed to
24 Game Pass in 2013, what do you recall you
25 needed to do, if anything, to access Game

1 GILL

2 Pass through your laptop?

3 A. I can't recall.

4 Q. Do you recall whether you had to
5 download any apps or software to run on
6 your laptop for Game Pass?

7 A. It's possible -- it's possible I
8 had to download software, but -- I
9 understand that, with laptops, you can
10 access apps, but it's a part of Windows
11 that is not really the part that I use.
12 So just all I do in updating an app is at
13 odds with the way I watch games.

14 Now, does that require
15 downloading a software? Yeah, I'm sure it
16 does, but do I recall the moment that I
17 needed to download it and how that went
18 out about in 2013? No. Do I ever recall
19 downloading software, specifically any
20 time after that? No.

21 Q. And specifically for the
22 2019-2020 --

23 A. No.

24 Q. -- NFL season, do you recall
25 whether you had to download any new apps

1 GILL

2 or software to continue viewing Game Pass?

3 A. I don't recall that at all, no.

4 Q. So why don't you scroll down to
5 the next document. I think it's like
6 three pages in. Okay. Stop.

7 A. Yeah.

8 Q. So this is the next of those
9 documents. So why don't you scroll
10 through this one -- well, what I have
11 right there, you know, you -- yes, scroll
12 through the whole thing, see if you recall
13 seeing this before, and then return to
14 that first paragraph.

15 A. I don't recall seeing this
16 before.

17 Q. Okay. No, no. You're too far
18 whack.

19 A. Right. Sorry.

20 Q. The top of the next document,
21 next page. Next page. Right there.
22 Okay.

23 A. Yeah.

24 Q. You see there that says, "This
25 offseason we're updating our service

1 GILL

2 provider as part of our commitment to
3 providing a premium NFL experience to our
4 fans around the world." You see that?

5 A. I can see that's what it says,
6 yes.

7 Q. Does this refresh your
8 recollection that --

9 A. It does not.

10 Q. -- that the service provided was
11 changed in 2019?

12 A. It does not.

13 Q. Okay. And if you just scroll to
14 the bottom of the next page. Right there.
15 You see at the bottom that this e-mail, at
16 the -- you know, you scroll -- you went up
17 one line too far. You see at the bottom
18 of that, it says -- this document also has
19 an address of OverTier Operations on it.

20 A. What's that? Oh, yeah, when I
21 hold my face really close to the screen so
22 I could make it out, I see it now that it
23 says that "OverTier Operations" is written
24 on this e-mail.

25 Q. Okay. And, once again, does

1 GILL

2 this help refresh your recollection at all
3 that, prior to this litigation, you heard
4 of OverTier as being a provider of Game
5 Pass in Australia for that season?

6 A. It does not help my
7 recollection. I had no idea who OverTier
8 Operations was.

9 Q. Okay. Continue down to the next
10 page, please.

11 A. Yeah. That one, the one --

12 Q. Right there. This is one of the
13 advertising, let's say marketing, e-mails
14 that were listed as being sent to you. I
15 just took this out as a representative
16 sample. And you had looked through it.
17 Do you recall having seen this or similar
18 material being sent to you by Game Pass?

19 A. I don't recall.

20 Q. And in that line, it says "Your
21 Season Pro subscription..."

22 Was Season Pro the level of your
23 subscription?

24 A. I don't know. Maybe.

25 Q. And it indicates "...will run

1 GILL

2 [till] August 1st of 2020... "

3 Is that consistent with your
4 recollection that you had a yearly
5 contract for each season?

6 MR. KRONENBERGER: Objection.

7 A. It auto-renewed, so, insofar as
8 it auto-renewed, yes, I was aware that I
9 had another season.

10 Q. Okay.

11 MR. LEGHORN: You can take that
12 one down. Do you have another
13 document to pull up?

14 (Defendant's Exhibit 14,
15 printout of Excel marketing chart,
16 four pages, marked for identification,
17 this date.)

18 Q. Mr. Gill, we previously showed
19 you a chart provided to us by OverTier as
20 to service e-mails sent to you during the
21 period of their operation of Game Pass.
22 This is the corresponding chart which
23 we've been advised that has the stored
24 electronic information as to each
25 marketing e-mail that had been sent to you

1 GILL

2 during the representative period of time.

3 And, as you'll see, it has the same

4 columns, DateSent and DateFirstOpened, and

5 you'll see, unlike the service e-mails,

6 DateFirstOpened is much more sparsely

7 populated than the service e-mail one.

8 You see that?

9 A. I do.

10 MR. KRONENBERGER: Objection.

11 Q. And --

12 A. Can I ask why that is?

13 Q. Excuse me?

14 A. Why is it as sparsely populated?

15 Q. Because, from -- and this is

16 subject to the foundation that

17 Mr. Kronenberger will point out, but which

18 we will be securing the authentication

19 from OverTier, is that, as we looked at in

20 the service e-mails, you opened them and

21 they reflected that you opened them and

22 had the ability to read them. Here, with

23 these marketing -- or advertising --

24 e-mails, this shows that the -- that the

25 overwhelming majority of them you never

1 GILL

2 opened. So the only ones that were opened
3 by you are the ones so reflected here.
4 That's the answer to your question.

5 A. Okay.

6 MR. KRONENBERGER: Vague,
7 foundation.

8 Q. So that's that document. I just
9 wanted to show you that, possibly to help
10 you understand the prior one we saw about
11 the service e-mails. But, having looked
12 at this, you'll see it looks like the --
13 you were sent almost weekly e-mails with
14 some marketing or, you know, content
15 informational e-mails from Game Pass. Is
16 that consistent with your recollection,
17 that you get an e-mail from Game Pass, you
18 know, every -- at least every week or two?

19 A. Well, whether I get them every
20 week or not, I can't speak to. Could I
21 see that there's regular correspondence
22 from Game Pass?

23 Q. Fine.

24 A. I'm sure there is. I have a
25 question, which is: Do these records

1 GILL

2 speak to the clicking of e-mails in Spam
3 or Trash?

4 Q. If they were Spam or Trash --

5 A. Yes.

6 Q. -- they couldn't be -- they
7 weren't opened. But if you scroll down,
8 you'll see that some of these were in fact
9 opened by you.

10 A. No, but my point is that can I
11 have e-mails in Spam or Trash and then
12 click on them to see whether or not they
13 should be there --

14 Q. Understood.

15 A. -- would that show up on these
16 records?

17 Q. Understood. My -- and --

18 A. It's a question about whether or
19 not -- it's a genuine question.

20 Q. It's a genuine question, but,
21 for the purposes of the deposition, I get
22 to ask the questions and I don't want to
23 offer you an answer that goes beyond my
24 understanding of what the documents show.

25 A. I accept that. I just wanted

1 GILL

2 that on the record, to say that there have
3 been practices in my past where I've had
4 an executive assistant and I know one of
5 the things to do was to go through all my
6 e-mails and just see if there's anything
7 in Spam that was not meant to be there or
8 anything in Trash that wasn't meant to be
9 there.

10 Q. You bring up a good point. That
11 Gmail address that you use --

12 A. Yes.

13 Q. -- for Game Pass --

14 A. Uh-hum.

15 Q. -- does anyone but you have
16 access to that e-mail address in your
17 Inbox?

18 A. At times through my life, there
19 have been. Regularly? My answer to that
20 question would be no.

21 Q. Fine.

22 MR. LEGHORN: You can bring up
23 the next one, Mr. Court Reporter.

24 (Defendant's Exhibit 15,
25 printout of marketing e-mails, 19

1 GILL

2 pages, marked for identification, this
3 date.)

4 Q. And, Mr. Gill, just scroll
5 through this. These are some of the
6 marketing e-mails listed on the prior
7 exhibit that were indicated to have been
8 sent to you, and my question is simply:
9 Did any of them refresh your recollection
10 of having received any of these e-mails
11 from OverTier?

12 MR. KRONENBERGER: Objection,
13 foundation.

14 A. Not that I -- there's a really
15 interesting one here, Nipsey Hussle. I
16 think I would have remembered that one.
17 He's not even a football player.

18 Q. Okay.

19 MR. LEGHORN: Can you give me
20 two minutes and I just want to confer
21 with Mr. Ranalli and I may be done.
22 Okay?

23 THE WITNESS: Okay.

24 (Time noted: 7:14 p.m.)

25 (Brief recess.)

1

2

(Time noted: 7:16 p.m.)

3

4

MR. LEGHORN: I'm back. Well,
Mr. Gill, I certainly thank you for
the early morning start time for you.

6

THE WITNESS: I appreciate it.

7

8

9

10

11

MR. LEGHORN: Okay. So I have
no further questions at this time for
the limited scope of discovery we were
permitted by the judge, and I thank
you very much.

12

13

Mr. Kronenberger, you got
anything?

14

15

MR. KRONENBERGER: I have no
questions.

16

17

MR. LEGHORN: Okay. Thank you.

18

(Mr. Kronenberger exits Zoom
deposition.)

19

20

(Discussion held off the
record.)

21

22

23

24

25

MR. LEGHORN: We're reserving --
he gets to review, correct, and sign
the transcript. I just want to make
sure there's no waiver. We're making
sure the witness gets the opportunity

1

2

to look at it and sign it.

3

MS. VULIÄ†: Thank you.

4

MR. LEGHORN: Let Karl know I

5

took care of him.

6

MS. VULIÄ†: Okay. I will.

7

Thank you.

8

THE WITNESS: Good.

9

(Time noted: 7:18 p.m.)

10

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D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth,
I gave the above testimony.

I FURTHER CERTIFY that the
foregoing transcript is a true and correct
transcript of the testimony given by me at
the time and place specified hereinbefore.

SIETEL SINGH GILL

Subscribed and sworn to before me
this ____ day of _____, 2022

Notary Public Commission Expires:

C E R T I F I C A T I O N

I, ABNER D. BERZON, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public, do hereby certify that the foregoing witness, SIETEL SINGH GILL, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



ABNER D. BERZON, RPR, CRR
Notary Public, State of New York
No. 01BE6303311
Qualified in New York County
Commission Expires 5/12/22

E X H I B I T S

Defendant's

NO.	DESCRIPTION	PAGE
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EXHIBIT 1		12
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Printout of e-mail dated
September 10, 2013 re: NFL
Game Pass Purchase Confirmation,
Bates stamped GILL00001

EXHIBIT 2		20
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NFL Subscription Products
Terms and Conditions effective
June 8, 2012, updated
July 29, 2013 Bates Stamped
DEF0000001 through DEF0000004

EXHIBIT 3		23
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NFL Subscription Products Terms
and Conditions effective
June 8, 2012, updated
August 6, 2014, Bates stamped
DEF0000199 through DEF0000203

(Exhibits Continued on following page.)

1

2

E X H I B I T S (Continued)

3

4

Defendant's

5

NO.

DESCRIPTION

PAGE

6

EXHIBIT 4

29

7

NFL.com - Subscriptions - Terms

8

and Conditions effective

9

June 20, 2017, Bates stamped

10

DEF000064 through DEF000066

11

EXHIBIT 5

33

12

NFL Digital Care communication

13

#895246, Bates stamped

14

DEF0001250

15

Exhibit 6

40

16

Game Pass invoices, Bates

17

Stamped DEF0000163 through

18

DEF0000174

19

EXHIBIT 7

43

20

Subscription Product Terms

21

provided by OverTier as the terms

22

and Conditions in effect for the

23

2019 season, Bates stamped

24

DEF0000013 through DEF0000020

25

(Exhibits Continued on following page.)

E X H I B I T S (Continued)

Defendant's

NO.	DESCRIPTION	PAGE
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EXHIBIT 8		47
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Printout of e-mail re: Your
Payment has been successful,
and redacted portions, Bates
Stamped GILL22 and GILL23

EXHIBIT 10		50
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Game Pass Updates to Terms and
Conditions effective
October 29, 2019, Bates stamped
DEF0001011

EXHIBIT 9		53
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Subscription Product Terms for
the 2019-2020 season, Bates
stamped DEF0000021 through
DEF0000029

(Exhibits Continued on following page.)

E X H I B I T S (Continued)

Defendant's

NO.	DESCRIPTION	PAGE
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EXHIBIT 11		60
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Subscription Product Terms for
Australia for the 2019 season
attached as an exhibit to the
original motion to dismiss,
Pages 2 through 18

EXHIBIT 12		63
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Printout of Excel chart provided
by OverTier indicating service
e-mails sent to Mr. Gill in the
2019-2020 time period

Exhibit 13		67
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Printout of document hyperlinked
from prior e-mail titled, "Game
Pass Reminder: Update your NFL
Game Pass App(s)", pages 1
through 11

(Exhibits Continued on following page.)

E X H I B I T S (Continued)

Defendant's

NO.	DESCRIPTION	PAGE
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EXHIBIT 14		76
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Printout of Excel marketing
chart, four pages

EXHIBIT 15		80
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Printout of marketing e-mails,
19 pages

LITIGATION SUPPORT INDEX

REQUEST FOR PRODUCTION OF DOCUMENTS

Page	Line	Page	Line
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38	20		
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Witness: Sietel Singh Gill

Notary Public Commission Expires:

[01032 - absolutely]

Page 1

0	2013 7:5,6,8,10,12 8:15 12:13 13:9 17:14,25 19:9 20:2,14 21:15,25 22:13 25:16,18 26:20 35:25 71:24 72:18 86:8,15	274.99 42:11 29 20:14 50:4 52:20 86:15 87:6 88:14 2nd 42:10 48:3	67 89:17 69 51:11 6:17 49:16 6:25 49:18 6:56 71:5 6:59 71:7
01032 1:4 01be6303311 85:20		3	7
1	2014 7:13 17:16 23:7 24:4,10 25:4 86:21 2017 29:23 30:7 31:4,8 87:9 2018 34:12 2019 25:20 26:21 32:8,16 34:17 35:4,4 36:2 42:11 43:24 44:17 46:22 48:3 50:4 52:20 53:15 60:23 61:4 63:15 68:20,23 74:11 87:23 88:14 89:8 2019-2020 53:24 56:24 58:16,17 59:11,17 63:5 65:19 69:3,6 71:14 72:22 88:18 89:16 2020 18:3 20:3 42:20 43:3 52:23 76:2 2021 63:15 2022 1:13 84:18 91:5,22 204.99 19:13 20th 30:7 212 2:16 23 1:13 86:17 91:5 24th 4:12 2510 51:11	3 23:2,4,12 86:17 30 70:20,24 3001 39:25 31 17:16 25:19 26:20 33 87:11 38 90:24 3869 85:18 39th 2:12	7 43:21 44:9,15 45:7 87:19 76 90:6 7:14 81:24 7:16 82:2 7:18 83:9
1 11:15 12:12 14:12,21 15:22 19:13 25:13 39:24 68:3 86:6 89:21 10 12:13 13:9 49:25 50:2 54:21 86:8 88:11 10038 2:13 10th 25:18 26:20 35:25 11 60:20,21 68:3 89:6,22 11:59 17:15 12 63:2,9 64:17 86:6 89:12 13 67:23 89:17 14 6:19 7:14 76:14 90:6 15 80:24 90:9 150 2:5 18 60:25 89:11 19 80:25 90:11 1992 8:2 1:21 1:4 1st 76:2	4	8	8 20:13 23:6 47:13 47:14 86:14,20 88:6 80 90:9 895246 33:3 87:13 8:07 4:12
		4 29:21 30:8 34:11 87:6 40 87:15 415 2:8 43 87:19 47 88:6 48 38:18 4th 34:20	9
		5	9 45:8,11 49:22 53:22 88:16 94108 2:6 955-1155 2:8 972-1000 2:16
		5 32:25 33:2 87:11 5/12/22 85:21 50 88:11 520 2:5 53 88:16 59 2:12 5:06 1:13 5:07 4:11	a
		6	ability 25:6 41:17 77:22 able 14:24 15:14 15:20,24 16:6 35:14 38:24 41:20 61:18 abner 1:16 4:3 13:16,19 20:9 22:25 24:7 29:20 43:19 85:6,19 absolutely 49:7
2		6 23:7 40:13 86:21 87:15 60 89:6 63 89:12	
2 20:11,20 45:24 46:2 60:25 86:11 89:11 2.1 46:3 55:12 20 29:23 31:8 86:11 87:9 90:24 2012 20:13 23:6 86:14,20			

abundance 66:16 accept 79:25 accepting 21:19 access 38:18 39:17 41:17 47:19 54:4 71:25 72:10 80:16 accessing 18:5 53:15 accomplished 36:7 account 16:7 36:18 38:17 39:18 40:23 accurate 55:16 85:12 action 1:4 4:22 5:2 22:16 35:20 65:2 85:16 actions 21:19 addition 45:18 additional 50:24 address 15:11,23 48:3 63:12 68:10 74:19 80:11,16 addressed 48:23 48:25 advertisement 29:11 advertisements 63:17 advertising 75:13 77:23 advised 76:23 advising 25:5 afford 19:21 ago 10:6 16:18 agreed 3:5,11,15 39:13 agreeing 22:17 agreement 1:15 ahead 18:18 53:4	al 91:4 alrighty 49:14 ambiguous 9:19 17:21 20:5 21:22 22:20 24:13 25:9 25:25 26:25 35:8 36:21 37:12 46:14 51:22 55:19 56:5 58:11 59:24 american 5:5 38:16 39:16 amount 16:23 answer 5:12 6:3 9:25,25 10:21 17:4,6,7 21:5 22:4 26:9,14,15 27:9,12 30:24 37:15,17 47:7,9 52:16 57:21 59:8 60:2,8 78:4 79:23 80:19 answered 17:5 answers 17:7 anticipated 18:24 19:4 anybody 61:19 62:9 apologies 4:16 41:24 apologize 26:6 app 68:3 71:10,14 71:19 72:12 89:21 appear 36:5 62:6 appeared 37:5 62:4 appears 12:19 24:2 53:9 54:9 61:11 applicable 9:16 18:7,12 19:25 20:22 21:19 22:17 24:3	applied 22:12 apply 24:24 50:20 50:24 applying 22:14 appreciate 61:17 82:6 appropriate 49:6 approximately 17:12 27:23 apps 72:5,10,25 argumentive 17:21 asked 5:22 6:15 48:13 52:3,9 65:15 69:7,14 asking 4:25 5:10 5:24 10:5 16:4,5 18:16 27:2 30:14 36:22 39:2 55:21 57:9,11 assistant 80:4 associate 4:19 association 1:10 assume 65:10 attached 60:23 61:5 89:9 attention 8:24 attorney 47:23 attorneys 2:6,13 14:22 16:4,13 aud 19:13 42:11 audio 37:13 42:23 42:24 47:5 51:24 52:5 66:18,19,21 66:22,24,25 67:3,4 67:8,9 70:25 71:2 august 23:7 42:10 48:3 76:2 86:21 australia 8:19 57:15 59:13,21 60:23 68:21 69:4	69:6 75:5 89:8 australian 7:23 51:20 52:11,17 authentication 77:18 authorized 38:4 authorizing 21:16 auto 76:7,8 automatic 24:18 25:7 automatically 24:15,16 availability 51:2 available 7:4,23 8:4,5,18 19:11 30:21 31:18 50:21 54:19 avoid 19:5 aware 19:6,18 22:14 28:4 76:8
b			
b 86:2 87:2 88:2 89:2 90:2 back 12:24 14:4 17:24 19:7 38:25 45:14,23 49:19 53:19 55:8 60:5 69:18,25 70:14 71:15 82:3 bank 38:16 39:18 41:18 bar 13:24 basically 41:8 61:18 bates 12:15 20:14 23:7 29:24 33:4 40:14 43:24 47:17 50:4 53:24 86:10 86:15,21 87:9,13 87:16,23 88:9,14 88:18			

[bathroom - connection]

Page 3

bathroom 49:5 beginning 19:8 behalf 1:6 9:4 believe 4:11 29:12 30:20 ben 44:3 benjamin 2:15 berzon 1:16 4:3 85:6,19 best 22:3 36:10 beyond 12:20 79:23 bi 4:8 bigger 50:8 billing 13:6 25:7 51:8 bit 47:21 bitrates 51:5 blackout 50:24 block 47:23 bottom 13:5 14:20 33:8 42:9 74:14 74:15,17 bowl 11:16,16,17 11:18 18:3 20:3 52:23 box 51:10 branali 2:16 break 6:12,15 13:16 49:5 70:20 70:24 brief 49:17 71:6 81:25 bring 29:19 40:11 43:19 49:21 80:10 80:22 browser 69:10,11 69:16 71:17,20 bulk 69:8 bullet 45:25 55:12	bunch 14:20	charge 24:24 37:9 38:9,22 42:10 charged 18:20,24 19:3 charges 19:5,12 38:2,3 charging 37:21,22 chart 63:3,10 76:15,19,22 89:13 90:8 chat 34:4 china 50:23 chrome 69:10 civil 1:4 clarify 10:12 19:23 53:3 clarity 64:12 clear 4:15 clearly 58:20 clerk 2:20 click 48:14,17 51:9 79:12 clicked 28:6 clicking 69:9 79:2 client 47:23 clock 6:10 close 8:11 74:21 closed 39:5,8,9 closely 18:19 collection 16:3 column 63:14,21 63:22 columns 77:4 coming 14:23 comment 66:13 comments 65:9,11 commission 84:21 85:21 91:25 commitment 74:2 commonwealth 39:18	communication 33:3 87:12 company 1:11 37:21 complains 32:14 complaint 32:10 completely 35:23 component 52:11 composite 70:7 compound 21:23 29:15 46:15 computer 64:15 concerning 16:16 conclude 57:11 conclusion 57:8,18 condensed 6:20 conditions 9:16 10:7,24 18:6,12 19:10,24 20:13,22 21:20 22:18 23:6 23:13,17 24:3 29:23 30:5 43:23 44:17 50:3 51:8 51:19 53:8,16 59:11 61:4 86:13 86:19 87:8,22 88:13 confer 81:20 conferencing 1:16 1:18 2:4,11 confirmation 12:14 25:14 86:9 confused 5:25 confusing 45:18 54:11 confusion 45:22 connection 26:22 29:12 32:23 34:3 36:4,19 40:9,22 51:3
	c c 2:2 84:2 85:2,2 california 2:6 call 12:21 calls 18:14 21:22 55:20 56:5 57:7 58:11 canada 50:23 capacity 24:22,23 card 12:2 21:17 24:20,21 36:6,12 36:18 37:10,25 38:5,13 39:15,20 40:2 41:13,15,19 42:18 cards 41:18 care 33:3,9 83:5 87:12 careful 46:21 case 6:22 14:22 17:3 30:15 61:7 91:4 cause 10:18 caution 66:17 cautious 47:8 cayman 51:12,13 certain 16:25 50:20 66:12 certainly 69:16 82:4 certification 3:7 certified 1:17 85:7 certify 84:4,8 85:9 85:14 change 44:5 91:8 changed 74:11 characterization 54:24 characterizations 65:7		

[considered - difference]

Page 4

considered 9:9 consistent 17:17 76:3 78:16 constantly 58:18 construction 59:7 consumer 45:20 54:11 contact 46:3 48:13 content 29:4 46:5 47:2 51:5 78:14 contention 59:17 contents 44:24 continental 4:8 continue 10:15 68:22 73:2 75:9 continued 86:24 87:2,25 88:2,22 89:2,24 90:2 contract 55:14 56:15,18,21,25 57:4,13 58:8,20 59:12,18 76:5 contracted 46:9 56:10 contracting 46:25 56:2 control 35:23 50:7 61:15 conversation 34:5 copy 15:5 61:3 correct 4:13 6:23 7:7,15,16 10:8 11:13 15:12 27:8 34:25 42:14 44:4 56:3 82:22 84:9 corrected 70:3 correctly 35:2,6 correspondence 78:21 corresponding 36:12 76:22	counsel 3:5 48:5 65:11 county 85:20 court 1:2 3:18 5:6 5:14 12:10 13:4 23:18 52:2 53:12 60:4,19 80:23 cover 11:5 create 45:22 credit 12:2 21:17 24:19,21 36:6,12 36:18 37:10,25 38:5,12 39:19 40:2 41:12 42:18 criteria 29:16 crosstalking 42:24 66:19,22,25 67:4,9 71:2 crr 85:19 cultural 8:10 cursor 13:23 customer 46:7,9 48:14 55:25 56:10 cv 1:4 d d 1:16 4:3 84:2 85:6,19 darker 61:12,14 61:19 date 12:16 20:16 23:9 25:15,16,18 25:19 27:3,3 30:2 30:7 31:7 33:5 40:16 42:10,19 44:2 47:18 50:6 52:20,22 54:2 61:2 63:7,15 64:10 68:4 76:17 81:3 85:10 91:5 dated 12:13 48:3 86:7	datefirstopened 63:23 77:4,6 datesent 63:14,20 77:4 day 84:18 91:22 daylight 4:10 deal 17:8 deals 46:7 dear 48:23 decision 9:10 19:20 deep 68:18 def0000001 20:14 86:16 def0000004 20:15 86:16 def0000013 43:25 87:24 def0000020 43:25 87:24 def0000021 53:25 88:19 def0000029 53:25 88:20 def0000163 40:15 87:17 def0000174 40:15 87:18 def0000199 23:8 86:22 def0000203 23:8 86:22 def000064 29:24 87:10 def000066 29:25 87:10 def0001011 50:5 88:15 def0001250 33:4 87:14	defendant's 12:12 14:12 20:11 23:4 29:21 33:2 40:13 43:21 47:14 50:2 53:22 60:21 63:2 67:23 76:14 80:24 86:4 87:4 88:4 89:4 90:4 defendants 1:12 1:15 2:13 4:22 define 27:18 definitely 21:10 28:7 deice 51:3 delaware 1:10 delays 10:19 delineated 4:24 deltatre 46:6,25 55:15 56:12 59:14 64:8 65:19,22 demands 16:19,22 depending 39:19 69:12 depends 39:15 deposition 1:14 3:8,15 4:23 5:4 6:7 70:6 79:21 82:18 described 22:3,6 29:17 description 86:5 87:5 88:5 89:5 90:5 details 12:2 51:7 determine 21:3 38:21 59:15 determining 29:8 device 64:21 69:13 devices 64:17 difference 29:8 44:13
---	--	--	---

[different - experience]

Page 5

different 54:15 59:5 65:12 differently 44:11 difficult 62:5 difficulty 29:5 digital 33:3,9 87:12 digits 39:25 direct 58:20 directly 9:11 discovery 39:5,8 82:9 discussion 12:22 13:25 20:17 33:16 51:25 69:23 82:19 dismiss 60:25 61:6 89:10 displayed 17:13 distinct 8:20 district 1:2,3 document 12:11 14:9,15,22 15:3,15 15:21 16:19 20:10 23:11,23 24:2,8 30:13,17 33:7,18 34:10 43:6 44:21 44:23,25 45:3 48:4 50:9,12 51:23 52:21 53:6 54:9,10,13,16,18 54:20 55:5,6,13 56:22 57:10,12 58:5,14,19,25 59:16,23 60:9,10 60:12,13,14,17 61:25 62:3,9,10 65:6,7,10 67:15,24 68:19 73:5,20 74:18 76:13 78:8 89:18	documents 15:25 16:6,21 31:17 67:19 68:7 73:9 79:24 90:22 doing 22:22 31:4 53:17 doubt 5:24 48:20 48:21 download 68:21 69:14 72:5,8,17,25 downloading 72:15,19 dr 51:11 drive 51:12 due 32:22 duly 4:3 84:5 85:10	early 82:5 ease 70:6 eastern 4:10 edge 69:12 educational 8:10 effect 3:17 38:6 43:24 44:17 52:22 87:22 effective 29:23 30:6 50:4 86:13 86:19 87:8 88:13 effectuate 12:3 either 14:24 25:23 38:13 57:13 59:18 60:13 65:18 electronic 76:24 electronically 38:13,15 64:7,25 embodies 57:12 employed 85:15 encountering 32:11 encourage 29:17 engelmayr 4:24 entered 21:13 38:21 56:24 entering 18:10 enterprises 1:10 4:21 57:2,14 58:9 58:22 59:4,8,20 entities 46:10 56:3 56:11 entity 36:17 37:8 38:9,21 entries 36:5,24 37:5 42:16,17 entry 34:12,21 36:12 error 42:16 especially 5:9	esq 2:7,14,15 et 91:4 exactly 5:11 examination 4:6 examined 4:5 excel 63:3 76:15 89:13 90:7 exchange 34:4 exchanged 16:19 excuse 31:11 77:13 executive 80:4 exercise 5:18 exhibit 12:12 14:12 15:22 19:13 20:11,20 23:2,4,12 25:13 29:21 30:8 32:25 33:2 39:24 40:5,12,13,18 43:21 44:9,15 45:8,11 47:12,14 49:22 50:2 53:22 54:21 60:21,24 61:5 63:2,9,9 67:23 68:8 70:7 76:14 80:24 81:7 86:6,11,17 87:6,11 87:15,19 88:6,11 88:16 89:6,9,12,17 90:6,9 exhibits 6:18 40:19 49:23 68:5 70:5 86:24 87:25 88:22 89:24 existing 22:9 exits 82:17 expect 26:8 expeditiously 6:8 experience 71:17 74:3
	e e 2:2,2,19,19 4:2,2 12:13 15:9,21 16:7,24 25:5,12,21 26:11,16,22 27:4 27:10,14,17,22 28:4,11,18,22 29:3 29:9,18 34:4 40:8 40:8 43:12 47:15 48:2,6,7 63:4,11 63:12,16 64:9,15 65:3,17,18,22 67:25 68:9,10 70:4 74:15,24 75:13 76:20,25 77:5,7,20,24 78:11 78:13,15,17 79:2 79:11 80:6,16,25 81:6,10 84:2 85:2 86:2,7 87:2 88:2,7 89:2,15,19 90:2,10 91:2,2,2 earlier 54:16 71:16		

[expiration - gill]

Page 6

expiration 42:19 expires 84:21 85:21 91:25 explain 6:3 9:21 express 38:17 39:16 extent 64:23 eye 6:9	25:14 32:7 40:20 40:24 42:4 45:14 45:23 47:25 55:8 64:10 68:12 69:18 70:15,15 71:8,23 73:14 84:5 fischer 2:12 4:18 five 38:23 40:20 40:25 49:9 fix 35:14 fixed 32:21 35:22 floor 2:12 fold 19:2,2 following 86:24 87:25 88:22 89:24 follows 4:5 font 61:15 football 1:9 4:20 4:21 25:16 59:19 81:17 force 3:17 foregoing 84:9 85:9,11 form 3:12 38:14 found 15:6 foundation 9:19 22:20 23:23 25:9 26:2,25 30:12 35:8 36:21 37:14 42:22 43:6 44:23 46:14 50:12 51:22 53:4 54:25 55:19 56:5 59:23 61:24 65:5 68:16 77:16 78:7 81:13 foundational 45:19 four 39:25 40:20 40:24 76:16 90:8 francisco 2:6	free 9:22 frequently 48:13 friday 48:3 friend 19:16 friends 8:21 22:7 front 64:15 full 11:12 17:18 26:18 further 3:10,14 43:14 51:6 65:8 82:8 84:8 85:14	garbled 37:13 42:22,24 47:5 51:24 52:5 66:18 66:19,21,22,24,25 67:3,4,7,9 70:25 71:2 gathering 5:18 general 25:11 30:12 39:6 61:23 generally 27:11 31:17 32:21 38:18 54:9 genuine 79:19,20 george 51:12 getting 28:4 35:13 45:8 70:17 gill 1:5,15 4:11,16 5:1 6:1 7:1 8:1 9:1 9:24 10:1,13 11:1 12:1 13:1,2 14:1,6 14:20 15:1 16:1 17:1 18:1,2,18 19:1 20:1,19 21:1 22:1 23:1 24:1,9 25:1 26:1 27:1 28:1 29:1 30:1,3 31:1 32:1,6 33:1 33:10 34:1 35:1 35:24 36:1 37:1 37:16 38:1 39:1 39:22 40:1,6,18 41:1,22 42:1 43:1 44:1,14 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1,3 55:1 55:11 56:1 57:1 58:1 59:1 60:1 61:1,3 62:1 63:1,5 64:1 65:1 66:1 67:1 68:1 69:1
f	g		
f 85:2 face 74:21 fact 22:14 34:18 48:12 69:2 79:8 failed 43:3,9 faint 61:9,10 fair 18:22 38:8 fairly 40:17 41:4 familiar 13:12,13 34:8 fan 7:25 fans 19:17 74:4 faq 51:6 far 73:17 74:17 federal 46:17 fee 24:25 37:22 file 24:20 filing 3:7 final 9:14 find 15:4,14,21,24 16:6,25 48:18 49:2 60:14 finding 15:2 fine 49:13 78:23 80:21 finish 5:10 26:3 firefox 69:12 firm 4:17,19 first 4:3 6:25 7:3 7:22 8:4,7 10:2,25 11:10,12,24 12:11 20:2,23 21:15	g 4:2,2 game 6:23 7:2,23 8:8,17 9:6,8 11:2 11:25 12:14 14:16 16:2,6,16 17:14 18:7 19:8,25 21:14,20,25 22:13 22:18 23:14 24:10 24:18 26:23 27:6 27:7,25 28:5 29:3 29:9 32:7,11,18 33:21 34:17 35:5 36:4,7,14,19,25 37:6,9,22,22 38:9 38:22 40:9,13,23 47:2 48:2 50:2,18 50:21 51:7 53:16 56:19 57:2,14 58:21 59:13,20 63:13 67:25 68:2 68:23 69:3 70:16 71:9,24,25 72:6 73:2 75:4,18 76:21 78:15,17,22 80:13 86:9 87:16 88:12 89:19,21 games 34:15 69:9 69:17 72:13		

[gill - knew]

Page 7

70:1,3,22 71:1 72:1 73:1 74:1 75:1 76:1,18 77:1 78:1 79:1 80:1 81:1,4 82:4 84:15 85:10 89:15 91:4 91:6 gill's 39:12 66:10 gill00001 12:15 86:10 gill22 47:17 88:10 gill23 47:17 88:10 give 66:8 81:19 given 84:10 gmail 15:11,15,23 16:15 48:2 80:11 go 7:11 18:18 30:5 34:12 38:25 42:4 45:14,23 47:22 53:4,19 55:8 69:18 70:14 71:4 80:5 goes 79:23 going 5:8,12 6:7 22:2 30:4 39:19 42:3,3,3 45:21 68:6,18 71:15 good 11:7 80:10 83:8 google 69:10 grand 51:12 granted 6:13 great 49:12 greenwich 17:15 ground 39:6 guess 28:3	hand 12:19 13:22 happen 12:7 happened 24:20 happy 6:5 hd 51:2 head 5:16 heading 27:6 28:10 hear 15:18 37:15 47:7 52:8 57:20 70:21 heard 75:3 hearing 40:7 held 1:15 12:22 13:25 20:17 33:16 51:25 69:23 82:19 help 75:2,6 78:9 hereinbefore 84:11 hereto 3:6 hidden 19:4 high 51:5 highlighted 45:2,4 45:5 48:12 highlighting 45:12 54:17 hit 68:8 hold 41:22 74:21 hours 38:19 house 51:11 huh 55:10 hum 18:4 20:24 31:14 37:7 48:11 54:22 61:21 80:14 hundred 8:12 hussle 81:15 hyperlink 48:15 48:18 53:7,15 54:19 68:9 hyperlinked 67:24 89:18	hyperlinks 51:15 i idea 48:20 75:7 identification 12:16 20:16 23:9 29:25 33:5 40:16 44:2 47:18 50:6 54:2 61:2 63:6 68:4 76:16 81:2 identifying 40:3 implies 31:5 important 11:18 11:21 inadequate 66:3 inbox 80:17 includes 7:10 including 5:21 51:8 increase 23:19 index 90:19 indicated 81:7 85:11 indicates 14:21 41:13 55:14 56:23 59:12,16 75:25 indicating 35:3 51:18 63:4,11 89:14 individually 1:5 individuals 1:6 information 5:17 9:7,17 12:3 14:16 19:11 40:3 41:13 42:2 43:14 46:2 48:19 64:8 76:24 informational 78:15 insofar 76:7 insufficient 39:9 interested 40:20	interesting 81:15 international 50:21 51:7 internet 7:19 9:3,8 32:22 51:3 69:9 69:11 interrupt 10:18 invoices 40:14,21 41:7 87:16 involved 27:5 involves 6:22 involving 27:24 ireland 50:25 isaacs 35:21 islands 51:13 issue 33:22 39:5 issues 4:23 32:18 itemized 27:14 j join 19:21 joined 19:16,17 judge 4:24 82:10 judges 66:12 july 17:16 20:13 25:19 26:20,21 36:2 86:15 june 20:13 23:6 29:23 30:7 31:8 86:14,20 87:9 k karl 2:7,8 83:4 keep 6:20 41:6 42:3,3,3 66:17 keeping 6:9 kensington 51:11 keywords 16:25 17:2 killer 70:20 knew 11:8,11
--	--	---	--

[know - march]

Page 8

<p>know 4:8 5:11 6:6 6:12,14 21:6,11,12 27:12 28:10 29:16 30:8 31:3 33:7 37:20 39:22,24,24 40:25 41:10,12,20 45:7,10 46:16 48:22,25 49:8 57:5,16,22,23,25 59:6 60:9,11 68:13 73:11 74:16 75:24 78:14,18 80:4 83:4 krinternetlaw.com 2:8,21 kronenberger 2:5 2:7,21 9:18,22 10:11,17 17:8,20 18:13 20:4 21:21 22:19 23:21 24:12 25:8,22,24 26:5,17 26:24 29:14 30:11 33:14 35:7 36:20 37:11,14 39:4,13 42:21 43:5 44:7 44:22 45:16 46:13 46:20 47:4 50:11 51:21 53:2 54:8 54:23 55:18 56:4 57:6,17 58:10 59:22 61:22 65:4 65:25 66:5,11,20 67:2,7,14,17 68:15 76:6 77:10,17 78:6 81:12 82:12 82:14,17 kurt 33:8 35:21 ky1-1104 51:12</p>	<p>l l 2:19 3:2 4:2,2,2 48:23,23 84:2 lack 55:19 lane 2:12 language 55:12 laptop 71:21 72:2 72:6 laptops 72:9 law 2:20 lawsuit 40:6 lawyer 9:20 lay 9:21 league 1:9 4:20 59:19 leah 2:20,21 learned 8:17 led 8:23 29:12 left 11:21 legal 57:7,18 leghorn 2:14 4:6 4:17 12:9,24 13:15 14:4 18:16 20:9 22:25 24:7 26:3,7 29:19 32:4 32:24 39:7 40:4 40:11 43:18 44:3 44:10 46:16 47:6 47:11 49:7,13,19 52:7,10 53:11,19 57:9,19 58:15 60:4,18 62:24 66:4,7,18,23 67:5 67:10,16,18 69:21 69:25 70:21 71:3 76:11 80:22 81:19 82:3,7,16,21 83:4 length 59:25 lengthiest 40:19 lengthy 40:17</p>	<p>level 75:22 liability 1:11 licensee 46:5 55:23 life 80:18 limited 1:11 4:23 6:7 82:9 line 33:8 56:9 74:17 75:20 90:23 90:23 91:8 liner 45:11 lingo 7:10 link 69:9 listed 15:11 75:14 81:6 litigation 44:21 75:3 90:19 little 14:19 21:2 34:11 47:21 48:9 llc 1:10 llp 2:5,12,21 local 66:16 locate 14:24 16:21 lodge 45:17 61:23 lodging 30:11 log 28:18,20 london 2:12 4:18 londonfischer.c... 2:15,16 long 27:13 44:19 50:13 54:7 look 13:2 18:19,25 23:15 30:4 31:23 38:2,5,20 40:24 58:25 63:14,19 68:12 83:2 looked 25:13 30:20 31:16,25 45:10 54:16,20 58:3,13,22,23 70:9 70:11 75:16 77:19</p>	<p>78:11 looking 8:3 15:22 17:7 19:10 28:17 looks 44:4 78:12 lose 6:10 lost 62:7 lot 12:18 m magnification 13:19 magnified 12:20 maiden 2:12 mail 12:13 15:9 16:7 25:12 27:4 27:14 29:3,9,18 43:12 47:15 48:2 48:6,7 63:12 64:15 65:3,17 67:25 68:9,10 74:15,24 76:25 77:7 78:17 80:16 86:7 88:7 89:19 mails 15:21 16:24 25:5,21 26:11,16 26:22 27:10,17,22 28:4,11,18,22 34:4 63:4,11,16 64:9 65:18,22 70:4 75:13 76:20 77:5 77:20,24 78:11,13 78:15 79:2,11 80:6,25 81:6,10 89:15 90:10 majority 77:25 maker 19:20 making 9:9 32:13 70:6 82:24 manner 65:21 march 1:13 4:12 91:5</p>
--	---	--	--

[margin - okay]

Page 9

margin 12:19 mark 20:20 marked 12:15 20:15 23:8,11 29:25 30:7 33:4 40:15 44:2 47:18 50:5 53:25 60:25 63:6 68:3 76:16 81:2 marketing 75:13 76:15,25 77:23 78:14 80:25 81:6 90:7,10 marking 14:12 master 41:15,19 material 46:5 75:18 matter 29:10 mean 11:14 17:15 64:14 66:15 means 60:2 meant 35:12 80:7 80:8 member 35:11 membership 34:17 memory 8:20 mentioned 19:15 59:3 methodology 66:5 microsoft 54:10 mid 34:17 35:4 middle 17:12 34:9 might've 28:13 mine 8:21 19:16 44:11 minutes 49:9,9,11 81:20 mischaracterizat... 61:24	mischaracterizes 59:23 misleading 54:11 moment 25:24 72:16 money 18:21 months 16:18 morning 4:12 39:12 82:5 motion 60:24 61:6 89:10 mouse 13:23 move 50:8 moved 13:22 n n 2:2,19 3:2 4:2 48:23 84:2 85:2 name 37:21 40:8 national 1:9 4:20 4:20 59:19 nba 8:13 necessarily 28:6 necessary 12:3,6 68:20 need 4:7 6:2,11 9:21 13:10 21:2 34:10 47:19 49:25 50:7,14 needed 71:13,25 72:17 neulion.com 13:8 never 45:13 77:25 new 1:3,9,17 2:13 2:13 4:4 41:4 53:7 53:16 68:21 69:15 72:25 85:19,20 nfl 1:10 7:9,25 12:14 17:14 19:17 20:11,21 23:4,14 23:14 24:4,10 27:6,6,25 28:5	32:8 33:2,9 34:17 35:5 48:2 50:18 50:20 51:7 56:15 56:18,19,21,25,25 57:13,14 58:9,9,21 59:4,5,7,7,19 68:2 69:3 70:16 71:9 72:24 74:3 86:8 86:12,18 87:12 89:20 91:4 nfl's 26:23 nfl.com 29:22 87:7 nflgamepass 13:8 nhl 8:13 nine 10:6 nipsey 81:15 notary 1:17 3:16 4:4 84:21 85:8,19 91:25 note 36:16 37:20 noted 19:12 49:16 49:18 71:5,7 81:24 82:2 83:9 notes 85:13 notice 51:17 notification 64:18 november 34:11 34:20 null 48:23,25 number 45:24 60:20 numbers 14:19 o o 2:19 3:2 40:8 84:2 85:2 oath 29:6 objected 26:8 objection 9:18 10:11,13,14 17:20 18:13,14 20:4 21:21 22:19 23:22	24:12 25:8,22,25 26:24 29:14 30:12 35:7 36:20 37:11 39:4,6 42:21 43:5 44:22 45:17 46:13 46:18 47:4 50:11 51:21 53:3,3 54:8 54:23 55:18 56:4 57:6,7,17 58:10 59:22 61:23 65:4 65:8 66:2,8,14 67:11 76:6 77:10 81:12 objections 3:11 9:23 47:8 57:20 66:2 68:16 obtain 43:13 occasion 8:4 10:5 32:9 occasions 31:21 occurred 8:14 october 50:4 52:20 88:14 odds 72:13 offer 79:23 official 46:5 offseason 73:25 oh 52:24 74:20 okay 4:14 5:7 6:25 7:21 10:16,20 11:10,20 12:8 13:14 14:14 15:7 15:10 16:10 17:4 18:22 19:7,22 20:8 21:13 22:5 24:6 27:16 28:15 29:7,19 30:3 32:3 33:19 34:2,14 36:3,24 38:7,12 39:7 42:6,7 44:10 45:24 47:10 49:3
--	--	---	---

[okay - practices]

Page 10

50:10 52:13,25 53:10,18 54:3,6 55:2 56:13 59:3,9 62:15,23 63:8,18 63:19 65:14 67:20 69:20 70:14 73:6 73:17,22 74:13,25 75:9 76:10 78:5 81:18,22,23 82:7 82:16 83:6 once 23:10 30:3 74:25 ones 78:2,3 online 7:17 8:9,23 9:14,17 14:25 15:4,6,8 18:10,11 19:11 21:14 22:15 30:21 34:4 61:11 62:13,14 open 29:4,6,9,18 65:2 opened 28:7 31:6 64:11 65:21 77:20 77:21 78:2,2 79:7 79:9 opening 64:15,19 operates 46:6 operation 76:21 operations 46:4 51:10 55:23 74:19 74:23 75:8 opportunity 82:25 opposed 29:11 63:17 opt 25:6 order 49:24 53:21 ordered 58:18 original 60:24 61:6 89:10 outside 50:22	overtier 28:19 40:8,21 43:23 44:16 46:4,25 51:10 54:18 55:15 55:23 56:12,16 59:14 63:4,10 64:5,8 65:19,22 74:19,23 75:4,7 76:19 77:19 81:11 87:21 89:14 overwhelming 77:25	party 65:11 85:15 pass 6:23 7:2,23 8:8,17 9:6,8 11:2 11:25 12:14 14:17 16:2,7,16 17:14 18:7 19:8,25 21:14,20,25 22:13 22:18 23:14 24:10 24:18 26:23 27:6 27:7,25 28:5 29:3 29:9 32:8,12,18 33:21 34:18 35:5 36:5,7,14,19,25 37:6,9,22,22 38:9 38:22 40:9,14,23 47:2 48:2 50:3,18 50:21 51:7 53:16 56:19 57:3,15 58:21 59:13,20 63:13 67:25 68:2 68:23 69:3 70:16 71:9,24 72:2,6 73:2 75:5,18 76:21 78:15,17,22 80:13 86:9 87:16 88:12 89:20,21 passed 41:22 pause 10:14 paying 19:19 25:14 35:11,13 payment 21:17 36:6 42:2 43:3,15 47:15 88:8 pdf 61:16 people 9:21 11:21 percent 8:12 perfect 10:9 period 11:4 26:19 27:11,13,24 28:19 28:19 32:16 35:25 38:22 63:6 65:20	76:21 77:2 89:16 permitted 82:10 pertaining 16:6 17:2 63:16 phrase 5:23 physically 64:22 64:23 place 23:21 84:11 placed 36:17 59:9 63:8 65:9 plaintiff 1:14 4:25 plaintiffs 1:7 2:6 platform 46:7 68:22 69:7 player 81:17 playoffs 7:11,13 please 5:25 23:2 23:19 30:8 40:12 45:15,24 51:9 60:19 62:25 75:10 plus 14:17 point 6:11 35:11 42:2 46:2 49:5 64:13 77:17 79:10 80:10 policy 51:15 pops 68:10 populated 77:7,14 portion 13:3 17:12 47:22 69:2 portions 47:16 88:9 possession 56:23 possible 6:9,20 8:14 72:7,7 possibly 78:9 post 2:5 practice 18:9,17 18:19 37:24 practices 80:3
	p p 2:2,2,19 3:2 p.m. 1:13 49:16,18 71:5,7 81:24 82:2 83:9 p.o. 51:10 page 12:18 45:14 45:23 47:20,25 51:6 55:9 69:19 73:21,21 74:14 75:10 86:5,24 87:5,25 88:5,22 89:5,24 90:5,23,23 91:8 pages 40:21,25 54:7 60:25 68:3 73:6 76:16 81:2 89:11,21 90:8,11 paid 34:16 pain 70:20,25 paper 38:14 paragraph 53:6 55:22 71:8 73:14 part 12:18 72:10 72:11 74:2 particular 22:15 41:14 parties 3:6		

[pre - receiving]

Page 11

pre 25:16 precise 25:17 premium 74:3 prescription 14:18 preserved 46:18 pretty 24:14 previously 54:20 55:13 56:11 76:18 print 47:21 printed 14:25 15:5 44:11 printout 12:12 47:14 62:13 63:3 67:24 76:15 80:25 86:7 88:7 89:13 89:18 90:7,10 prior 8:7 9:13 18:2 20:3 22:10 25:3 30:9,15 32:8,16 40:6 44:21 52:22 53:20 67:25 68:8 68:19 75:3 78:10 81:6 89:19 privacy 39:23 51:15 privilege 47:23 pro 11:16,18 75:21 75:22 probably 16:18 32:22 40:18 problem 13:21 35:15,22 42:18 problems 32:11,20 45:19 proceed 6:8 proceedings 4:9 process 43:14 processed 42:13 produced 14:21 65:13	product 43:22 53:23 60:22 87:20 88:17 89:7 production 90:22 products 20:12 23:5 86:12,18 professional 1:16 85:7 prompting 33:24 pronounced 34:22 provide 11:25 16:10 provided 9:8 20:21 29:13 40:22 43:22 44:16 48:4 53:6 54:18 63:3 63:10 74:10 76:19 87:21 89:13 provider 15:9 32:10 33:21 38:16 38:17 74:2 75:4 providing 28:20 47:2 74:3 provision 57:2,14 58:21 59:20 public 1:17 3:16 4:4 84:21 85:8,19 91:25 pull 60:20 62:25 76:13 pulled 44:6 purchase 12:14 86:9 purchased 17:24 21:25 39:20 purchasing 17:18 purely 19:3 purpose 69:15 purposes 70:12 79:21	pursuant 1:15 put 12:10 20:9,19 23:2 32:24 47:12 49:23 53:20 67:21 70:5 q qualified 85:20 quality 17:6 51:2 queries 46:7 question 3:12 6:15 10:3,4,8,10,22 11:8 17:4,5 22:12 23:24 25:12 26:4 26:18 31:5 36:23 37:19,19 52:4,10 52:16 54:12,14 58:7,24 59:8,25 60:6,7 62:16 65:15,16 78:4,25 79:18,19,20 80:20 81:8 questioning 4:9 questions 4:25 5:8 5:11,22 48:13,18 79:22 82:8,15 quick 13:16 quicker 70:6 quickly 50:14 r r 2:2,15,19 40:8,8 84:2 85:2 91:2,2 ranalli 2:15 4:18 81:21 reach 33:20 reaching 43:12 read 9:9 13:11 17:23 18:11 29:4 31:6 33:12,18 45:25 50:17,19 52:18 60:5,7 62:5	64:16 71:10 77:22 reading 17:22 18:6 35:2,5 40:7 55:16 really 11:7 35:10 36:23 44:13 60:2 61:9,10 72:11 74:21 81:14 realtime 1:17 85:7 reason 6:12 30:19 reasonable 56:20 reasons 19:15 39:23 recall 8:17 9:7,12 9:13 10:5,23 12:5 14:23 15:2 16:20 18:5,8 19:14 23:16,25 24:5 25:3,10 26:10,15 26:19,21 27:4,10 27:17,23 30:9,17 30:22,24 32:9,13 32:15,17 34:2,7 37:8,18,23 38:8,11 41:2 42:17 44:20 48:5 50:15,16 51:16 62:2,8 68:13,17,19,24 69:14 71:24 72:3 72:4,16,18,24 73:3 73:12,15 75:17,19 recalled 40:7 62:3 receive 26:10 37:25 68:22 received 25:5 27:16 28:18,22 31:23 45:3 48:5,8 81:10 receiving 13:20 25:21 26:11,22 27:4,11,24
---	---	---	---

[recess - season]

Page 12

recess 49:17 71:6 81:25 recipient 64:10,14 recognize 14:14 41:9 52:17,19 55:21 recollection 17:18 19:9,23 20:6 21:7 21:8 25:20 33:20 36:11 42:25 43:2 43:7,8,11,16 53:14 53:17 55:4 62:19 65:20,24 71:13 74:8 75:2,7 76:4 78:16 81:9 recommended 35:17 record 4:8 9:24 12:23,25 14:2,5 20:18 23:22 33:17 49:20 51:25 69:22 69:24 70:2 80:2 82:20 records 14:25 16:24 38:24 78:25 79:16 red 45:11 redacted 47:16 88:9 referred 46:8 refers 52:17 refine 22:11 reflect 4:7 reflected 77:21 78:3 refresh 33:19 65:20,24 71:12 74:7 75:2 81:9 refreshes 62:18 refreshing 66:6	regarding 23:22 44:23 54:24 61:23 65:5,8 67:15,18 registered 1:16 85:6 regular 78:21 regularly 80:19 related 62:16 85:15 remember 33:24 33:24 remembered 81:16 reminder 68:2 71:9 89:20 renewal 24:18 25:4,7 37:6 38:10 42:20 46:24 renewed 24:15,17 28:9 58:18 76:7,8 repeat 6:2 rephrase 6:5 reporter 1:16,17 5:14 12:10 13:4 23:19 52:2 53:13 60:5,19 80:23 85:7,8 represent 4:19 representation 65:17 representative 75:15 77:2 represented 59:10 64:4 republic 50:25 request 15:15 49:4 90:22 require 64:22 66:13 71:18 72:14 required 11:25	requirements 12:20 51:4 reserved 3:12 reserving 82:21 residing 65:3 resolved 35:18,20 respect 51:19 respective 3:6 responded 6:16 response 18:23 39:10 responses 5:15 responsive 16:22 restrictions 50:20 50:24 result 35:21 return 41:5 73:13 reverse 49:24 review 38:7 82:22 right 6:21 7:9 10:15 12:19 13:22 15:10 22:11 30:15 42:5 47:24 55:9 62:15,15 63:22 73:11,19,21 74:14 75:12 rosenfeld 2:5,21 roy's 51:11 rpr 85:19 rules 46:17 66:16 run 72:5 75:25 runs 35:3	san 2:6 save 38:12 saved 44:8 savings 4:10 saw 8:23 19:12 27:14 29:2 55:13 70:8 78:10 saying 29:5 says 9:24 17:13 34:14,19 42:13 46:3 50:20 55:17 55:22,24 56:7,8,9 56:11,14 58:14,19 73:24 74:5,18,23 75:20 scope 82:9 scouring 16:24 screen 13:24 14:11 17:13 23:2 33:6 42:9 63:25 74:21 scroll 13:4,16 20:25 33:15 34:10 44:18 54:4,13,14 63:24 73:4,9,11 74:13,16 79:7 81:4 scrolled 55:3 scrolling 13:23 41:6 70:8 sealing 3:7 search 58:4 60:13 60:15 searched 60:16 season 7:6,8,10 11:9,12 14:17 17:15,19 19:9 20:23 23:14,15 24:4,10 25:2,4,15 25:16 32:8,17 34:16 42:20 43:4 43:24 44:18 45:9
		s 2:2,19,19 3:2,2 4:2,2 68:3 71:10 86:2 87:2 88:2 89:2,21 90:2 91:2 s.p.a. 46:6 safety 39:23 sample 75:16	

[season - street]

Page 13

46:22,24 53:24 56:24 58:15,17 59:12,17 60:23 61:5 68:20 69:3,6 69:17 71:14 72:24 75:5,21,22 76:5,9 87:23 88:18 89:8 second 13:16 47:20 53:5 70:20 70:24 section 42:5 sections 45:2 securing 77:18 see 12:17 13:3,7 13:11 14:3 17:10 17:11 21:10 23:15 28:9,10,21,22 33:8 33:9 41:9 42:8,9,9 42:11 44:4,19 45:20,25 48:15 50:14 51:17 52:5 53:5 55:11 61:9 62:10 63:15,22,24 73:12,24 74:4,5,15 74:17,22 77:3,5,8 78:12,21 79:8,12 80:6 seeing 23:25 24:5 25:10 26:16 30:17 51:16 62:2,3 73:13,15 seeking 43:13 seen 14:6 21:4,6 21:10 23:16 30:9 30:15 41:2 44:20 45:13 46:10 50:15 50:16 52:12 55:5 55:6 61:8 62:9,18 62:21 65:16 68:13 70:13 75:17	selected 50:22 self 35:18,20 sending 33:25 sent 16:12 62:10 62:11 63:5,11 64:9 65:18 68:9 75:14,18 76:20,25 78:13 81:8 89:15 separate 70:4 september 12:13 13:9 25:17 26:19 35:25 86:8 sequence 68:7 service 8:18 9:16 18:11,12 21:18 22:2,16 28:20 29:13 32:10 35:12 63:4,17 65:18,21 73:25 74:10 76:20 77:5,7,20 78:11 89:14 services 8:9,10 set 23:12 setting 13:19 shakes 5:15 share 23:3 short 44:19 show 49:25 78:9 79:15,24 showed 76:18 showing 6:17 23:10 64:17 68:6 shown 44:14 shows 77:24 side 13:22 16:19 sietel 1:5,14 34:19 34:22 84:15 85:9 91:6 sign 22:21 82:22 83:2	signature 85:18 signed 3:16,17 9:2 10:6 11:24 significant 16:23 signing 8:21 9:6 similar 75:17 similarly 1:6 simple 10:21 21:5 simply 81:8 singh 1:5,15 84:15 85:10 91:6 single 27:4,14 sit 31:22 sitting 64:14 situated 1:6 size 23:19 slightly 8:15 small 12:18 smaller 50:8 software 72:5,8,15 72:19 73:2 sole 19:19 solely 14:10 sorry 8:20 26:5 34:23 62:8 65:14 73:19 source 44:24 southern 1:3 spam 79:2,4,11 80:7 span 63:15 sparsely 77:6,14 speak 78:20 79:2 speaking 14:10 specific 37:20 58:6 58:24 specifically 43:10 58:13 60:16 72:19 72:21 specified 84:11	speculate 28:2 speculation 18:15 21:23 55:20 56:6 58:12 speed 51:3 spend 24:22,24 spent 16:23 sports 8:9 stamped 12:15 20:14 23:7 29:24 33:4 40:14 43:25 47:17 50:5 53:24 86:10,15,21 87:9 87:13,17,23 88:10 88:14,19 stand 70:3 standing 66:8 67:11 start 6:21 25:15,18 27:3 82:5 starts 70:16 state 1:17 4:4 85:19 statement 36:6,13 37:25 statements 38:6 38:13 41:18 states 1:2 50:23 stenographic 85:13 step 9:14 stephen 2:7 stipulated 3:4,10 3:14 stop 41:7,9,10 73:6 stored 38:15 64:7 76:23 streaming 51:5 street 2:5
---	---	--	---

[string - transmission]

Page 14

string 67:12 structure 66:21 stuff 61:18 subject 28:24 29:2 29:10 51:3 77:16 subscribe 7:5 8:16 9:10,15 24:9 subscribed 7:2 8:8 11:2,11 22:8,10,13 36:13 71:23 84:17 91:21 subscriber 32:19 52:11 55:15 56:2 59:13 63:13 68:21 subscribers 7:24 51:20 52:18 subscribing 11:12 21:16 22:15 32:7 subscription 7:18 8:7 11:4 12:4 14:18 17:14,24 18:10 20:2,12 21:14 23:5 28:8 34:15 35:3 36:5 43:22 53:23 60:22 70:17 75:21,23 86:12,18 87:20 88:17 89:7 subscriptions 8:13 11:7 29:22 36:8 87:7 subsequent 23:14 successful 47:16 88:8 successfully 34:16 suggestive 46:15 suite 2:5 super 11:16,17 18:3 20:3 52:23 support 48:14 90:19	supporting 64:5 supports 59:16 sure 5:20 8:12 11:9 14:13 24:14 28:6 37:18 38:2 39:18 55:24 60:2 72:15 78:24 82:24 82:25 swallow 70:24 sworn 3:18 4:3 84:5,17 85:10 91:21 system 51:4	19:10,24 20:12,22 21:20 22:17,22 23:5,12,16 24:3 29:22 43:22,23 44:16 50:3 51:8 51:14,19 53:7,16 53:23 59:11 60:22 61:4 86:13,18 87:7,20,21 88:12 88:17 89:7 territories 50:22 testified 4:5 testify 84:5 testimony 64:5 84:6,10 text 50:18 thank 8:6 15:20 22:24 49:14 67:17 67:21 82:4,10,16 83:3,7 thing 9:20 73:12 things 22:22 31:25 80:5 think 4:7 6:18 7:3 11:6,16 18:20,23 21:3 26:12 27:23 28:12 30:23 31:4 32:25 35:9,16,16 35:17,20 42:22 44:12 45:7 49:22 49:23,24 56:19 73:5 81:16 thinking 39:14 48:24 third 56:9 thomas 2:14 4:17 thought 27:21 56:20 70:4 three 28:13 68:5 73:6	thursday 39:11 till 5:13 34:17 35:4 35:4 76:2 time 3:13 4:10 6:11,25 7:3,22 11:4,10 16:24 17:16 18:2 19:14 19:18,25 21:15 25:23 26:19 27:11 27:13,15,24 28:14 30:21 32:6,14,16 32:23 35:9,25 38:25 39:12 49:16 49:18 63:5 65:19 66:10 71:5,7 72:20 77:2 81:24 82:2,5,8 83:9 84:11 89:16 times 43:3 80:18 timing 8:11 title 28:23 29:11 titled 67:25 89:19 tleghorn 2:15 today 6:18 30:10 told 28:7 35:22 tom 26:6 33:14 44:7 66:11 tomorrow 4:12 top 73:20 total 6:19 totality 16:14 33:7 town 51:12 track 6:10 44:5 transaction 36:17 transcript 82:23 84:9,10 transcription 85:12 transmission 32:18
	t t 2:19 3:2,2 4:2 40:8 84:2 85:2,2 86:2 87:2 88:2 89:2 90:2 91:2,2 take 5:14 6:14 13:2,15 18:25 19:7 23:15 24:8 30:4 32:4 36:16 37:20 39:11 40:4 43:19 44:18 47:11 50:13,13 52:22 53:12 60:18 62:24 66:9 67:20 68:12 70:20 76:11 taken 1:15 5:4 talk 39:11 talking 14:8 22:7 technical 32:17,20 technology 33:22 telephone 34:5 tell 5:7 41:6 49:10 temporarily 32:21 ten 49:9,11 tens 28:12 term 30:5 terms 9:15 10:7,24 15:8 18:6,11		

[trash - yup]

Page 15

trash 79:3,4,11 80:8 traveling 31:9,13 31:22 trial 3:13 46:19 triggering 64:18 true 31:19 84:9 85:12 truly 30:24 truth 84:5 try 6:5,7 19:22 22:11 trying 6:19 35:10 52:4 59:15 66:17 tuesday 13:9 turn 45:24 tv 8:13,13 two 13:16 19:2,2 28:13 42:16 43:3 78:18 81:20 typography 61:20	64:20 79:24 understood 10:4 22:23 79:14,17 undertaken 58:4 undue 10:19 unfortunately 61:11 unincorporated 1:10 united 1:2 50:23 unopened 65:3 upcoming 25:2 update 68:2 70:17 71:9,13 89:20 updated 20:13 23:6 45:9 86:14 86:20 updates 50:3 51:18 88:12 updating 71:18 72:12 73:25 use 13:23 35:24 44:12 51:14 69:11 72:11 80:11 users 22:9 50:22	versions 62:17 video 1:15,18 2:4 2:11 51:2 videos 52:5 view 68:23 69:2 viewed 9:15 10:7 10:23 54:10 viewing 19:24 73:2 visa 41:15,20 visit 51:6 voice 43:13 vuliä 2:20 83:3,6	withdrawn 37:4 witness 10:16,20 13:18 23:18 26:14 45:22 49:4,11,14 52:3,9 70:19,23 81:23 82:6,25 83:8 85:9 91:6 word 5:23 28:23 31:20 54:10 words 27:5,22 world 74:4 worried 45:21 written 74:23 wrote 34:19,24
u		w	x
u 3:2 48:23 u.k. 50:25 u.s. 4:10 uh 18:4 20:24 31:14 37:7 48:11 54:22 55:10 61:21 80:14 umm 39:21 unaware 8:5 underneath 50:18 understand 5:22 6:4,22,24 10:3,22 17:22 21:15 36:23 37:3,18 56:14 66:7 72:9 78:10 understanding 7:22 8:3 10:8,9 11:3 21:24 24:17 35:10 46:23 62:12	v 1:8 40:8 91:4 vague 9:19 10:12 17:21 18:14 20:5 21:22 22:20 24:13 25:9,25 26:25 29:15 35:8 36:21 37:12 46:14 51:22 53:4 55:19 56:5 58:11 59:24 78:6 valid 24:21 veracity 30:25 verbal 5:15 versed 61:19 version 44:5,8 54:15 61:7	wait 5:12 waived 3:9 waiver 82:24 waiving 67:12 want 5:20 10:17 10:18 41:25 44:19 49:9 53:2 79:22 81:20 82:23 wanted 78:9 79:25 watch 71:14,16,20 72:13 watched 69:5,8,13 69:17 watching 34:15 69:15 way 22:3 66:12 69:8 72:13 we've 23:11 30:7 61:7 62:18 76:23 week 11:15 78:18 78:20 weekly 78:13 went 72:17 74:16 whack 73:18 whoops 42:4 windows 72:10	x 1:5,12 86:2 87:2 88:2 89:2 90:2
			y
			yeah 11:14,23 13:10,13 17:11,23 26:7,17 28:25 30:16 31:9 33:18 33:23 39:16,21 41:11 48:16 52:14 52:24 56:13 60:8 64:2,6,24 67:14 70:11,18 71:3,3,3 72:15 73:7,23 74:20 75:11 year 7:11 28:16 31:18 36:13 37:6 38:10 39:20 41:14 62:7 yearly 76:4 years 10:6 38:23 york 1:3,10,17 2:13,13 4:4 85:19 85:20 yup 34:13 42:12

[zeros - zoom]

Page 16

z	
zeros	14:20
zoom	1:15,17 2:4
	2:11 5:9 23:20
	82:17

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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